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In The

Supreme Court of the United States

October Term, 1994

CECELIA N. EAGLESTON,

Petitioner,

vs.

DANIEL GUIDO, BRIAN K. BUGGE, Police Officer, DETECTIVE RIVERA, DENNIS DONNELLY, Police Officer, EDWARD KOPF, Police Officer, DANIEL MOORE, Police Officer, JACK OZER, Police Officer, DEWITT C. TREDER, JAMES ROONEY, Police Officer, MP MILWARD, Police Officer, MICHAEL PESALE, Police Officer, PAUL KERN, Police Officer, SUFFOLK COUNTY, SUFFOLK COUNTY POLICE DEPARTMENT,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does a police practice not to arrest, investigate, or pursue, when the victim is in a domestic relationship with the offender violate equal protection?

If so,

A. Is the municipality's public acknowledgment that such a practice exists evidence that such a practice exists?

B. Are the municipality's arrest statistics, which show a substantial disparity between arrests in domestic incidents when compared to arrests in non-domestic incidents, evidence that such a practice exists?

C. Is a municipality's failure to cease a discriminatory practice after the municipality has acknowledged the discriminatory practice exists, evidence of discriminatory intent?

2. Does a police practice not to arrest, investigate, or pursue when the victim is in a domestic relationship with the offender need to be gender based in order to violate equal protection?

If so,

A. Are sexist and demeaning attitudes and statements of police officers some evidence that such a practice is gender based?

B. Is the municipality's profession of concern that the victims of such a practice are women some evidence that such a practice is gender based?

3. Does a municipal resolution which requires police officers to arrest whenever an order of protection is violated, or whenever there is evidence of a criminal offense between family members, confer a benefit which entitles the victim to constitutional due process?

4. Does a special order by the police commissioner which requires arrest whenever an order of protection is violated or whenever there is evidence of a criminal offense between family members, confer a benefit which entitles the victim to constitutional due process?

5. Is qualified immunity a defense to a denial of equal protection based upon the gender of the victim or the relationship of the victim to the offender?

6. Does the statute of limitations for a denial of equal protection accrue on the date of the injury for which the suit is brought, or, on the date of an injury for which suit could have been brought?

There is considerable disagreement between the Circuits on these questions. In the Ninth and Tenth Circuits, it is a violation of equal protection to discriminate on the basis of the relationship between the victim and the offender, *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696 superseding 897 F.2d 368 (9th Cir. 1990); *Watson v. The City of Kansas City*, 857 F.2d 690 (10th Cir. 1988). In the Second and Eighth Circuits, it is a violation of equal protection only when the reason for the discrimination is gender based, *Eagleston v. Guido*, 41 F.3d 865 (2nd Cir. 1994); *Ricketts v. City of Columbia, Mo.*, 36 F.3d 775 (8th Cir. 1994). In the Fifth Circuit, there is no violation of equal protection because of this Court's decision in *DeShaney v. Winnebago*, 489 U.S. 189 (1989), although this Court did not address the equal protection issue in *DeShaney*. The Third Circuit seems to hold that a municipality violates equal protection when it discriminates on the basis of the relationship between the victim and the offender, but requires the discrimination to be gender based when the action is against the individual police officer, *Hynson v. City of Chester, et al.*, 864 F.2d 1026 (3rd Cir. 1988).

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit which is the subject of this Petition was rendered on December 7, 1994 and is reported as *Cecelia Eagleston v. Daniel Guido, et al.*, 41 F.3d 865 (2nd Cir. 1994). The Memorandum and Order of the United States District Court for the Eastern District of New York, dated April 22, 1992 is reported as *Cecelia Eagleston v. Daniel Guido, et al.*, 790 F. Supp. 416 (E.D.N.Y. 1992).

STATEMENT OF JURISDICTION

Petitioner seeks review of a judgment of the Court of Appeals for the Second Circuit entered on December 7, 1994. A Petition for Rehearing was timely filed and denied on February 16, 1995. This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following constitutional provision and statute:

United States Constitution, Amendment Fourteen:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life,

liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983:

§ 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

The District Court had jurisdiction pursuant to 42 U.S.C. § 1983.

This is an action against the County of Suffolk, its former Police Commissioner DeWitt Treder and ten Suffolk County police officers. The petitioner alleges that Suffolk County and Commissioner Treder had a policy of arrest avoidance in domestic violence cases which denied petitioner equal protection and due process of law. The petitioner further alleges that the

Suffolk County police officer respondents acted in accordance with the policy and failed to take any action to deter petitioner's husband from acts of violence against her and failed to enforce her orders of protection. Finally, petitioner alleges that respondents' arrest avoidance policy in domestic situations was a substantial factor leading to the vicious assault upon the petitioner in her home by her estranged husband who stabbed her 33 times causing her severe and permanent personal injuries.

The action against the respondents was commenced on December 7, 1989 and all of the incidents in which petitioner asked for and was denied police protection and enforcement of her orders of protection occurred within a two month period between October 20, 1986 and December 27, 1986 when petitioner was stabbed by her husband. Prior to trial, the District Court dismissed the action against the individual police officers Bugge, Kopf, Kern and Donnelly based upon the statute of limitations. The District Court also dismissed the actions against Officers Ozer and Moore on the basis of qualified immunity. Petitioner consented to the dismissal of the actions against Detective Rivera and Police Commissioner Daniel Guido, who was named only in his official capacity.

Subsequently, the action was tried before the District Court (Wexler, J.) and the court dismissed the actions against police officers Pesale and Milward upon the basis of qualified immunity after petitioner's case. After trial, the jury reached a partial verdict to the extent that it found that the respondent Suffolk County and/or former Police Commissioner DeWitt Treder had an unconstitutional policy. However, the jury was unable to reach a unanimous agreement of eight on whether or not the unconstitutional policy was the proximate cause of petitioner's injury and as a result the court declared a mistrial.

At the second trial (Tsoucalas, J.), the jury again reached a

partial verdict finding that Suffolk County had an unconstitutional policy which denied victims of domestic violence equal protection of the law. However, again the jury could not reach a unanimous verdict of eight on the question of proximate cause. The court then dismissed the action finding there was no evidence of a denial of petitioner's constitutional rights. The Court of Appeals affirmed ruling that a practice of arrest avoidance in domestic situations was not a denial of equal protection unless it could be shown the practice was gender based and that petitioner failed to prove that the practice was gender based.

REASONS FOR GRANTING THE WRIT

I.

RESPONDENT MUNICIPALITY'S PRACTICE OF FAILING TO ARREST, INVESTIGATE, OR PURSUE WHEN THE VICTIM WAS IN A DOMESTIC RELATIONSHIP WITH THE OFFENDER VIOLATED EQUAL PROTECTION.

The Equal Protection Clause of the Fourteenth Amendment guarantees to every person within the United States equal protection of the laws. United States Constitution, Amendment 14. This clause applies to police agencies and individual police officers. Simply put, while there is no general constitutional right to police protection or enforcement, the State may not discriminate in providing it, *see Yick Wo v. Hopkins,* 118 U.S. 356 (1886). The Equal Protection Clause, however, is not limited to racial classifications, though laws or policies using such a classification do receive the highest level of scrutiny. Policies which differentiate based on gender are subject to less scrutiny than racial classification, but will still be held violative of the Equal Protection Clause unless the classification can be shown to

be substantially related to an important governmental objective, *Craig v. Boren,* 429 U.S. 190 (1977), *reh'g denied,* 429 U.S. 1124. Lastly, laws on policies which differentiate on the basis of all other types of classifications will be held to violate the Equal Protection Clause unless the classification is shown to be rationally related to a legitimate government purpose, *San Antonio School Dist. v. Rodriguez,* 411 U.S. 1, *reh'g denied,* 411 U.S. 959 (1973). Clearly, police officers cannot refuse to protect a particular class of persons when under the same or similar circumstances they would protect others.

It is now well settled law that a municipality may be sued under 42 U.S.C. § 1983 for constitutional violations committed by its employees when the employee's wrongful acts constitute the policy or custom of the municipality, *Monell v. New York Department of Social Services,* 436 U.S. 658 (1978). The policy or custom need not be formal or written, *Monell,* 436 U.S. at 691, and the custom or policy may be established by showing a "deliberate indifference" to the constitutional rights of the petitioner and those in the defined class, *Watson v. The City of Kansas City,* 857 F.2d 690 (10th Cir. 1988); *Sherrell v. The City of Longview,* 683 F. Supp. 1108 (E.D. Tex. 1987); *Thurman v. The City of Torrington,* 595 F. Supp. 1521 (U.S.D.C. 1984). "Deliberate indifference", in turn, may be proved through a variety of direct and circumstantial evidence.

Applying these general principles to incidents of domestic violence, a municipality, a police agency and individual police officers cannot decline to make arrests, conduct investigations or take other effective police action because the victim and the perpetrator are in a domestic relationship, *Watson v. The City of Kansas City,* 857 F.2d 690 (10th Cir. 1988); *Balistreri v. Pacifica Police Dept.,* 901 F.2d 696 superseding 897 F.2d 368 (9th Cir. 1990); *Sherrell v. The City of Longview,* 683 F. Supp. 1108 (E.D. Tex. 1987); *Dudosh v. The City of Allentown,* 665 F. Supp. 381,

rehearing denied, Dudosh v. Wang, 668 F. Supp. 944, *vacated in part,* 853 F.2d 917; *Bartalone v. County of Berrien,* 643 F. Supp. 574 (W.D. Minn., S.D. 1986); *Lowers v. City of Streator,* 627 F. Supp (N.D. Ill. 1985); *Thurman v. The City of Torrington,* 595 F. Supp. 1521 (U.S.D.C. 1984).

A. Respondents Had a Practice of Discriminating Against Victims of Domestic Violence.

The petitioner established that respondent County had a practice of discriminating against victims of domestic violence through (1) admissions by respondent County; and (2) the County's own statistics on domestic violence.

(i) Admissions by the Respondent County of a Practice of Discrimination.

In 1984, respondent Suffolk County, concerned about the alarming rise in incidents of domestic violence in the County, and critical of the Suffolk County police practice of treating domestic incidents as non-criminal, directed its Police Commissioner, the respondent Treder, to implement a policy requiring an immediate arrest where an order of protection was violated or where there was evidence of a criminal offense by one family member against another family member (App., 67a-70a). The impetus for the resolution was a hearing before the Public Safety Committee of the Suffolk County Legislature in which the members of the committee expressed their concern to respondent, Treder, that the Suffolk County Police Department was not treating cases of family violence as criminal matters, but, instead, had a policy of treating such matters as private family matters. Commissioner Treder objected to the resolution because he did not agree that criminal enforcement should be the only recourse; instead he felt that the police should have the option of Family Court. However, the legislators made clear to Commissioner Treder that they were

insisting upon criminal enforcement and that the problem with the then current Suffolk County policy was that the police officers were not treating violence between family members as criminal matters (App., 46a-66a).

Also at the hearing, members of the public and heads of organizations concerned with the problem of domestic violence in Suffolk County complained that in the overwhelming number of cases where the police were called by women in their time of need, the police had done nothing and that the reasons given by the police for not being able to do anything was (1) the couple was married and that it was a family matter and not a matter for the police; (2) the police cannot ask the husband to leave his home or remove him from his home because it is his house too; (3) the abuser was not at the scene and the police could not chase him; (4) the woman had to have an order of protection in order for the police to do anything; (5) that the police couldn't do anything because it was the first time she called police; (6) and that if they took the abuser to the station, the abuser would only be there two hours and then released and probably return home angrier than when he was taken away (App., 58a-61a).

Despite the resolution directing criminal enforcement in cases of family violence, and, despite the hearing, the complaints of the legislators and members of the public and of women's groups, respondent Treder testified that he had no memory of instituting or modifying any policies on domestic violence, of maintaining any special records for domestic violence incidents, or receiving any complaints about police handling of domestic violence incidents during his term as commissioner.

Perhaps even more significant, however, is the fact that when Police Commissioner Guido and the new County Executive instituted an arrest policy in 1988, they thought they were making a change in policy, that for the first time in Suffolk County, police

were to arrest in incidents of family violence and abuse based upon the act and not upon the relationship of the individuals involved. They were unaware the exact same policy had purportedly been instituted by the prior county executive and the prior police commissioner (Treder) four years earlier, in 1984.

(ii) The County's Statistics Established a Practice of Discrimination.

In October of 1984, shortly after his appearance before the Public Safety Committee, respondent Treder issued an order that directed a civilian or summary arrest where there was evidence of either a felony or misdemeanor being committed by one family member against another. In addition, he directed that records be kept of all domestic incidents, domestic incident arrests, and victim contacts where no arrests were made (App., 71a-73a). In September of 1985, respondent Treder issued a second order which required an arrest whenever an order of protection was violated (App., 74a-80a).

The statistics on domestic incidents compiled by the Suffolk County Police Department under Treder's order show that in 1985 there was a 4% arrest rate in domestic incidents, a 2.7% arrest rate in 1986, and for the half year that statistics were kept in 1987, a 2.1% arrest rate. Other statistics on domestic violence maintained by Suffolk County as required by state law reflect that of all aggravated and simple assaults for the years 1984, 1985 and 1986 only 6% involved family members, and for those same years the police treated 90% of all domestic incidents as non-criminal. Furthermore, women were the victims in 93% of all cases of domestic violence.

However, other than issuing these orders, respondent Treder took no other step to attempt to bring about an actual change in practice. He did not inform, teach or train any of his police

officers in the arrest policy, and, in fact, when he was questioned on the subject in this case several years later, had no memory that there had ever been any criticism during his administration of the manner in which the police were handling domestic violence cases and, of course, testified that he never did anything about changing police practice in domestic violence cases. For their part, the police officers involved in the incidents in this case all testified there was never any change in policy from the period 1984 to 1988 and essentially the practice in the police department was to attempt to mediate the situation between the parties rather than to treat it as criminal matter. Finally, the County Executive conceded that he took no steps to ensure that the arrest policy was implemented.

Moreover, the statistical evidence is overwhelming that, in fact, during the period of Commissioner Treder's tenure 1984 to 1988, the police in practice avoided rather than made an arrest in cases of domestic violence. Thus, when an arrest policy was actually implemented in 1988 by the new Police Commissioner, Daniel Guido, the police arrested in 15.6% of domestic incidents; in 1989 in 19% of domestic incidents; and, in 1990 in 14% of domestic incidents (App., 102a). Averaging the figures, the report reflects a 500% increase for arrests in domestic violence incidents, as compared with the period when respondent Treder was commissioner. Furthermore, the report indicated that whereas in 1988, assaults accounted for 8.3% of all incidents, in 1991 they accounted for 5.6%, a decline of 35%, reflecting the impact of the arrest policy. Finally, the report indicated that (as compared with 90% of the incidents being considered non-criminal during respondent Treder's term), only 40% of domestic incidents were considered non-criminal during Guido's term, yet during both periods, there was, at least facially, the same policy of arrest (App., 100a).

(iii) The Failure of the County to Cease Its Discriminatory Practice After It Acknowledged the Existence of the Discriminatory Practice Is Evidence of Discriminatory Intent.

In 1984, the County acknowledged that it had a practice of discriminating against victims of domestic violence and directed its police commissioner, respondent Treder, to change the practice and to implement a policy of mandatory arrest in domestic incidents. However, Treder did not change the prior practice and did not implement the new policy. Furthermore, the County's statistics establish there was no change in the rate of arrests in domestic incidents during Treder's tenure as police commissioner as might have been reasonably expected if, in fact, Treder had implemented the new mandatory arrest policy. The failure of the County to change its discriminatory practice after it became aware of the discriminatory practice is evidence of discriminatory intent.

The appellate panel ruled that the fact that Treder did not implement the arrest policy as directed to by the County did not create an inference of discriminatory intent since "governments often announce and threaten policies of strict enforcement . . . while affording the police measured discretion".

It should be noted, however, that the County has consistently maintained that it implemented the arrest policy and has never contended that the County resolution requiring mandatory arrest was simply intended as a public relations ploy.

The appellant panel also ruled that the evidence of the dramatic increase in both arrests and domestic incidents which were treated as criminal under Commissioner Guido, as compared to when respondent Treder was commissioner, was not evidence of discriminatory intent since there was an inherent

difference between domestic disputes and non-domestic disputes and a community could decide to use mediation rather than arrest in domestic incidents without impacting equal protection.

It should be noted, however, that the County, by its resolution in 1984, rejected the policy of mediation its police force was then using and ordered a change in policy to require arrest, and specifically not mediation, in domestic disputes. Furthermore, the County has always contended that it did not have a policy of mediation for domestic incidents, but arrested whenever there was probable cause to arrest.

II.

RESPONDENT MUNICIPALITY'S PRACTICE OF FAILING TO ARREST, INVESTIGATE, OR PURSUE WHEN THE VICTIM WAS IN A DOMESTIC RELATIONSHIP WITH THE OFFENDER WAS GENDER BASED.

The petitioner established that the practice of respondent County to discriminate against victims of domestic violence was gender based through (1) the sexist and demeaning attitudes and statements of the police officers who responded to petitioner's requests for assistance; and (2) the County's own expressed concern about the impact of its discriminatory practice on women.

A. The Sexists and Demeaning Attitudes and Statements of the Police Officers Who Responded to Petitioner's Requests for Assistance Is Evidence That the Discriminatory Practice Was Gender Based.

The fact that the police officers, whether through lack of training or supervision or otherwise, exhibited sexist and

demeaning attitudes toward petitioner is evidence that the practice of discriminating against victims of domestic violence is gender based, *Balistreri, supra.*

In *Dudosh, supra,* at 392-394, the court gave us an example of discrimination, an officer's statement that he would not arrest in a domestic violence situation when "the only evidence I had was her word"; another was a practice of not issuing an arrest warrant when the husband was not present when the police arrived. In *Balistreri, supra,* at 710, it was a responding officer's derogatory remark that he "did not blame plaintiff's husband for hitting her because of the way she was carrying on".

It is, of course, not necessary for the plaintiff to furnish a "smoking gun" to establish intentional discrimination. Intention can be inferred from the circumstances, the actions taken or not taken, and the attitudes expressed by the defendants, *Dudosh, supra; Balistreri, supra;* Gender distinctions must not perpetuate "archaic and stereotypical notions" or be analyzed by applying traditional and often inaccurate assumptions about the proper roles of men and women, *Mississippi Univ. For Women v. Hogan,* 458 U.S. 718, 725-26 (1982) cited with approval in *Hynson v. City of Chester, et al.,* 864 F.2d 1026, (3rd Cir. 1988). *Also see, Battered Women and the Equal Protection Clause*, 95 Yale Law Journal, 788, 790-91 (1986) for a discussion of stereotypes which harm women, *e.g.*, "a man's home is his castle", etc., by implying man's right to rule his family as he sees fit.

As a result of respondent Treder's failure to change police practice, and as evidenced by police conduct in this case, the police continued to treat domestic violence as a family matter rather than as criminal matter, continued to exhibit sexist attitudes, to minimize the wife's complaints, to expect the wife to give in and placate the husband, to disbelieve the wife, and to fail to take even minimal action on the wife's complaints.

Thus, when petitioner called the police on October 20, 1986, and complained that her husband was threatening her and was destroying a wall that had been erected in the basement of their home, Officer Bugge wrote the incident up in his official report as a dispute over a car. Bugge said he felt petitoner's husband could put holes in the wall if he wanted to because it was community property (New York is not a community property state). Bugge said that Mrs. Eagleston wasn't really cooperating with him because she insisted on having her husband arrested and he wanted to mediate it. Petitioner testified that when the police left and she went outside she saw the police talking to her husband and when her husband saw her he called her a whore and the police snickered.

After this incident petitioner obtained an order of protection but her husband continued to stalk her and encouraged their 7 year old son to abuse her. On November 7, her husband struck her and she took her son and drove to the police station where she showed Officer Kirk her order of protection and asked to have her husband arrested. However, when her husband showed up at the police station and said "she is my wife, I will take her home", instead of taking any action against her husband as petitioner requested, the police officers did nothing and she was forced to run out of the police station with her husband chasing after her and threatening to kill her.

On November 9, 1986 petitioner's husband beat her at home and in defending herself, petitioner inflicted superficial cuts upon her husband. She called the police and when the police arrived she showed the police her order protection. Petitioner's son, who was a witness to the incident, told the police that his father was beating his mother. The police officer did not arrest her husband for violation of order of protection or for assault. The police officer who responded, Officer Kern, testified that as far as the son saying his father was beating his mother he likened it an 8

year old child getting slapped by his father which is not a beating. According to Kern, the 8 year old can think it is a beating but it is not really a beating. Kern also testified that while he felt the wound to petitioner's husband was superficial and in self-defense, because it was with a knife he felt the husband was a victim of a felony and he advised the husband to bring charges against petitioner.

On November 20, petitioner called police because her husband was destroying her graduation picture, her computer and other personal property. When the police arrived, Officer Donnelly, stated that he would not arrest the husband for destroying his wife's property because a husband can destroy his wife's property if he wants to. Furthermore, even though it was petitioner who called the police, Donnelly "resolved" the situation by having petitioner leave the house.

On November 23, petitioner called police because her husband was beating her again. Again her son witnessed the beating and this time the officer did arrest petitioner's husband. However, merely on the unsupported word of petitioner's husband that petitioner also attacked him, Officer Kirk also arrested petitioner and she was forced to spend the night in jail during which time she was taken to the hospital for treatment for her injuries. The next day charges against her were dropped.

After the beating on November 23, the petitioner obtained a second order of protection which gave her exclusive use and occupancy of the house and the judge ordered petitioner's husband to not only leave the house but not to be even on the block. On December 7, the petitioner felt her husband was in the basement of the house in violation of the order of protection and she called the police and Officer Ozer responded. Despite the fact that according to Officer Ozer's own testimony he interpreted the second order protection as prohibiting the petitioner's husband

from being in the house, he took no action on the order of protection merely upon the rather incredulous statement of petitioner's husband that he, petitioner's husband, was renting from petitioner.

On December 8, after a court appearance petitioner's husband attempted to run her down with his vehicle. The police responded, and Officer Pesale, even though petitioner told him that her husband was probably in the basement of her house, did not even make the minimal investigation of going into the house and searching for her husband.

On December 24, after another court appearance in which her husband got very angry, a rock was thrown through her window. She reported the incident to the police, advising that her husband was extremely angry that they had just come from family court, and she believed he was in the basement because right after the rock was thrown she heard the downstairs door slam. Officer Milward merely indicated that because she hadn't seen who threw the rock he could do nothing. He made no investigation, not even so much as going to the basement and making an inquiry. Similarly, a second rock was thrown through her window later that same day. A second police officer responded, Officer Edmonds. Again, he did nothing, not even writing out a report but simply appending to Officer Milward's report that a second window had been broken.

The appellate panel did not address this evidence of a practice of gender based discrimination which, it is submitted, only could have resulted from a tacit approval and/or a reckless indifference to proper training and supervision of its officers in responding to domestic violence complaints at the highest policy making levels of the police department.

B. The County's Own Expressed Concern About the Impact of the Discriminating Practice on Women Is Evidence That the Practice Was Gender Based.

It is clear from the minutes of the legislative hearing that the 1984 resolution adopted by respondent County to implement a mandatory arrest policy in cases of domestic violence was in response to a concern that the practice of arrest avoidance and mediation was harmful to women. In fact, when the mandatory arrest policy was actually implemented in 1988, it was drafted in joint consultation and reliance upon "the insight, experience and perspective" of advocates for battered women (App., 96a), and was done "to break the cycle of family violence and to increase the safety of women and children" (App., 98a). Clearly, as far as the county was concerned, women were the victims, and men were the batterers, and it was to protect women from battering by men that the arrest policy was adopted.

> In general men in Suffolk County are beginning to realize that they are no longer entitled to hit their partners. They are beginning to realize their behavior is inappropriate ... When I get a domestic violence case I feel much more optimistic. I have forty of them, whereas I used to get one every year and it was the worst case I had because there was nothing to do with it. My feeling is that the judges and police officers and caseworkers feel the same way about it—that they have a place to go with the case. I'm really proud of the program because I think it's effective.

(App., 115a-116a)

The fact that respondent County publicly recognized that its practice of discrimination in domestic violence incidents resulted in women being battered by men, and nonetheless continued the practice, is evidence that the practice was gender based.

II.

THE RESPONDENT COUNTY, BY MUNICIPAL RESOLUTION AND/OR POLICE COMMISSIONER ORDER, CONFERRED A BENEFIT UPON PETITIONER ENTITLING HER TO CONSTITUTIONAL DUE PROCESS.

A municipality may be liable where its officers deny a right to which a citizen is entitled, *Board of Regents v. Roth,* 408 U.S. 564 (1972). Statutes, *Meador v. Cabinet for Human Resource,* 902 F.2d 474 (6th Cir.), *cert. denied,* 111 S. Ct. 182 (1990); rules or understandings, *Roth supra,* at 577; contracts, *Perry v. Sinderman,* 408 U.S. 593, 601-603 (1972); "ordinances and policies" of a city, *Archie v. City of Racine,* 847 F.2d 1211 at 1225 (7th Cir. 1988); or an order of protection, *Coffman v. Wilson Police Department,* 739 F. Supp. 257, 262-630 at 265-66 (E.D. Pa. 1990); *Siddle v. City of Cambridge,* 761 F. Supp. 503 (S.D. Ohio 1991), may all confer a benefit which entitle the beneficiary to constitutional due process.

In this case, the County resolution and Treder's police commissioner orders both required arrest whenever an order of protection was violated or whenever there is evidence of a criminal offense between family members. Accordingly, petitioner had a right to have her husband arrested when he violated her orders of protection and assaulted her and destroyed her property. The refusal of the police to arrest denied her a benefit to which she was entitled and denied her due process.

The appellate panel did not address this argument.

III.

THE RESPONDENT POLICE OFFICERS DID NOT HAVE QUALIFIED IMMUNITY.

A police officer who complies with a policy or practice which he knows violates the constitution is personally liable and is not protected by qualified immunity, *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982). It is inconceivable that a police officer would not know that it is a violation of the constitution to fail to enforce the law because of the gender or class of the victim, *Dudosh,* 665 F. Supp. at 381; *Bartalone, supra.*

All the respondent police officers defended their actions in this case on the grounds, (1) that they didn't have probable cause to arrest, either for the commission of a crime or a violation of petitioner's order of protection; or (2) that they did all that they could reasonably have been expected to do under the circumstances.

However, the defense of lack of probable cause tends to beg the question since ". . . it is possible or perhaps even probable that (the) officers' assessments as to whether probable cause exists are colored by whether the disturbance is domestic or non-domestic . . . in other words, the determination of whether or not probable cause exists and the decision to arrest may present essentially the same issue", *Watson, supra.*

As with a discriminatory policy, the Court should consider the attitudes and actions of the officers to determine whether their failure to act discriminated against petitioner because of her gender or class, as a victim of domestic violence, *Dudosh, supra.*

Officer Bugge clearly exhibited the most demeaning and sexist attitudes towards women. Called to the scene because

petitioner's husband was physically threatening her and punching holes in the walls of their home, Bugge felt a husband had a right to destroy "community" property, became upset with the petitioner because she wasn't agreeable to mediating the matter, and recorded the incident as simply a dispute over a car. Similarly, Officer Donnelly, called to the scene because petitioner's husband was destroying her property, felt her husband had not violated her order of protection because her husband had a right to destroy her property and "resolved" the situation by having the petitioner, who was the victim, leave the house. Officer Kirk, called to the scene because petitioner was being beaten by her husband in front of their son, felt that there was no beating because he saw no bruises, dismissed the statement of the son that his father was beating his mother, because children that age don't really know what a beating is, and advised petitioner's husband to press criminal charges against her because she inflicted superficial wounds on her husband while defending herself against his attack.

But it is not only such blatant and obvious sexist and demeaning statements and attitudes that are evidence of a discriminatory intent. In fact, it is rare to have such damaging admissions directly from the police officers themselves. More often discriminatory intent must be gathered from the actions taken and not taken by the officers in response to the wife's complaints, *Dudosh, supra; Balistreri, supra.*

For instance, when petitioner was struck by her husband and went to the police station to have her order of protection enforced, the police simply acquiesced when her husband arrived and said, "She is my wife, I will take her home". The attitude was that the husband, as the head of the house, has a right to have the matter treated as a private family matter and not one which should involve arrest. The desk officer, Officer Kern, simply wrote out a complaint and referred her to Family Court even though it was not

a Family Court Order of Protection. There was no question in his mind of enforcing the order by arresting the husband.

After the petitioner got her second Order of Protection which also gave her exclusive use and occupancy of the house, she believed that her husband was staying in the basement of the house in violation of the order of protection, and called the police. Her husband admitted that, in fact, even though the Judge had ordered him out of the house, that he had almost immediately sneaked back into the basement of the house and continued to live there. Officer Ozer, who responded to the petitioner's complaint that her husband was in the basement, not only did not arrest petitioner's husband for violating the order of protection or take any action to remove him from the basement, but merely upon the husband's claim that "he was renting from his wife", took no action and simply suggested that they go back to court and get it all straightened because he couldn't understand how she could be renting to him when she had exclusive use and occupancy of the house. A couple of days later, when her husband attempted to run her down with his vehicle and she called the police, she also told Officer Pesale that her husband was staying in the basement of the house in violation of the order of protection, but Officer Pesale did not perform the minimal investigation of going over and seeing if her husband was in the basement either to arrest him or even only to question him.

Finally, on Christmas Eve, when petitioner's husband was denied visitation, he raced back to the house, and, petitioner said, made abusive and threatening phone calls to her. At one point, a rock was thrown through the window and she called police and told them she believed it was her husband who was in the basement of the house. Officer Milward's response was since she didn't see her husband throw the rock, he couldn't do anything and would not even go to the basement to question her husband.

Clearly, there were questions of fact as to whether the actions of the officers were intentionally discriminatory and not objectively reasonable.

Moreover, unlike the grant of qualified immunity to a police officer who has probable cause to arrest, even if he or she is acting from an evil motive, a police officer should not have a similar immunity for failing to arrest or investigate where the decision is based upon the race, sex or class of the victim. As stated in *Watson, supra,* where, as here, the claim is that the police did not arrest because the police were following a discriminatory policy, the question of probable cause is really the same as the question of discrimination since the discrimination colors the police officer's judgment as to whether probable cause exits. Furthermore, discrimination also colors the police officer's judgment as to whether to investigate so that probable cause can be established and it is petitioner's claim that not only did the police officers not arrest because of the county's arrest avoidance policy, but that they also failed to conduct a proper investigation because of the discriminatory policy. Assuming, *arguendo,* that the failure to arrest is entitled to the same qualified immunity as the fact of arrest, it should, as with unlawful arrest, be an affirmative defense to be established by the respondents. It should not, as here, be the burden of the petitioner to prove that the officers did have probable cause to arrest.

The issue in this case is not whether the police officers had probable cause to arrest, but, having found that there was a discriminatory arrest avoidance policy, whether or not the failure of the police officers to arrest or investigate, was a substantial factor in bringing about petitioner's injury. Placing upon the petitioner the further burden of proving that the police officers had probable cause to arrest or to investigate was clearly error.

IV.

THE STATUTE OF LIMITATIONS FOR DENIAL OF EQUAL PROTECTION ACCRUES ON THE DATE OF THE INJURY FOR WHICH THE SUIT IS BROUGHT.

While a civil rights action borrows its statute of limitations from state law, the time of accrual of a civil rights action is nonetheless a question of federal law, *Kaiser v. Cahn,* 510 F.2d 282, 285 (2nd Cir. 1974). Under federal law, the time of accrual is when the plaintiff knew or had reason to know of the injury and its connection with the acts of the defendant. *Urie v. Thompson,* 337 U.S. 163, 69 Sup. Ct. 1018, 93 L. Ed. 1282 (1963); *LaVellee, Jr. v. Listi,* 611 F.2d 1129 (5th Cir. 1980); *Mullinax v. McElhenney,* 817 F.2d 711 (11th Cir. 1987); *Cox v. Stanton,* 529 F.2d 47 (4th Cir. 1975); *Young v. Clinchfield Railroad Company,* 288 F.2d 499, 503 (4th Cir. 1961); *also see, Origel v. Washtenaw County,* 549 F. Supp. 792, 796 (Ed. Mich. S.D. 1982) applying *Cox, supra,* on a 1983 claim based on denial of due process and equal protection.

The critical fact is the point at which plaintiff was injured, realized she was injured, and knew who it was that injured her, *Watts v. Grave,* 720 F.2d 1416, 1423, (5th Cir. 1983); *Calhoun v. Alabama Alcoholic and Beverage Control Board,* 705 F.2d 422 (11th Cir. 1983); *Egelston v. State University College at Geneseo,* 535 F.2d 752 (2nd Cir. 1976). The determination of when a plaintiff had knowledge of both the injury and its connection with the acts of the defendant is a question of fact and it is for a jury to decide ultimately when the plaintiff should be charged with having sufficient knowledge to trigger the statute of limitations. *Lavellee, supra; Santiago Hodge v. Parke Avis Co.,* 909 F.2d 628 (1st Cir. 1990); *Watts v. Graves, supra.*

In a civil rights action, plaintiff is entitled to damages for her injury in accordance with general tort principles. *Methodist*

Community School District v. Stachuru, 477 U.S. 299, 306 (1986); *Carey v. Piphus,* 435 U.S. 247, 257, 258 (1978).

In this case the injury which is the basis of the action occurred when petitioner was savagely assaulted by her husband, Thomas Eagleston, on December 27, 1986. The gravamen of petitioner's complaint against the respondent police officers is that they denied her equal protection of the law and due process of the law both when they refused or failed to respond to her complaints of being assaulted and harassed by her husband, and when they refused or failed to enforce her order of protection. Clearly, petitioner could not have reasonably been aware that she had been injured by the failure of the respondent police officers to take action until her husband assaulted her. The action against the respondent police officers was commenced on December 5, 1989, which was within the three year period of the statute of limitations for civil rights actions.

The appellate panel ruled that the statute of limitations accrued on the date of an earlier injury she sustained when attacked by her husband, which was outside the limitation period.

It should be noted, however, that that incident, involved the one occasion when the police did respond to petitioner's complaint and arrest her husband for assault. Since petitioner's claim is based on a police practice of non-arrest and in that instance the police did arrest, it should be left to a jury to determine if petitioner should have known on that occasion that she had been injured by respondent's non-arrest policy.

CONCLUSION

Petitioner respectfully requests that the Court grant this petition and issue a writ of certiorari to the United States Court of Appeals for the Second Circuit.

Respectfully submitted

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APPENDIX A — ORDER DENYING REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT FILED FEBRUARY 16, 1995

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

DOCKET NO: 93-9053

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 16th day of February one thousand nine hundred and ninety-five.

CECELIA N. EAGELSTON,

Plaintiff-Appellant,

V

DANIEL GUIDO, DETECTIVE RIVERA, DENNIS DONNELLEY, Police Officer, DANIEL MOORE, Police Officer, and JAMES ROONEY, Police Officer,

Defendant,

BRIAN K. BUGGE, Police Officer, EDWARD KOPF, Police Officer, JACK OZER, Police Officer, DEWITT C. TREDER, MP MILWARD, Police Officer, MICHAEL PESALE, Police Officer, PAUL KERN, Police Officer, SUFFOLK COUNTY, SUFFOLK COUNTY POLICE DEPARTMENT,

Defendants-Appellees.

Appendix A

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed by Appellant Cecelia Eagleston

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is *DENIED.*

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT,
GEORGE LANGE III, Clerk
By: s/ Carolyn Clark Campbell
Chief Deputy Clerk

APPENDIX B — DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DATED DECEMBER 7, 1994

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 1719 — August Term 1993

(Argued: June 23, 1994 Decided: December 7, 1994)

Docket No. 93-9053

CECELIA N. EAGLESTON,

Plaintiff-Appellant,

- v. -

DANIEL GUIDO, DETECTIVE RIVERA, DENNIS DONNELLY, Police Officer, DANIEL MOORE, Police Officer, and JAMES ROONEY, Police Officer,

Defendants,

BRIAN K. BUGGE, Police Officer, EDWARD KOPF, Police Officer, JACK OZER, Police Officer, DEWITT C. TREDER, MP MILWARD, Police Officer, MICHAEL PESALE, Police Officer, PAUL KERN, Police Officer, SUFFOLK COUNTY, SUFFOLK COUNTY POLICE DEPARTMENT,

Defendants-Appellees.

Appendix B

Before: MAHONEY and JACOBS, *Circuit Judges*.[1]

Plaintiff appeals from several rulings made in the course of her 42 U.S.C. § 1983 suit against Suffolk County, New York and against several of the County's police officers, claiming that a policy or practice of not making arrests for domestic violence violated her rights under the Equal Protection Clause of the United States Constitution and caused her to suffer injury at the hands of her husband. She appeals from (1) a January 23, 1992 ruling (Wexler, *J.*) denying additional discovery; (2) an April 22, 1992 ruling (Wexler, *J.*) granting summary judgment to four defendants under the statute of limitations and granting summary judgment to another defendant on the ground of qualified immunity; (3) a directed verdict in favor of two police officers on the ground of qualified immunity (Wexler, *J.*); and (4) a directed verdict in favor of the County and the former police commissioner on the ground that there was no evidence of an unconstitutional municipal policy. (Tsoucalas, *J.*) Appellant also appeals a variety of rulings in the trial before Judge Tsoucalas.

Affirmed.

BARTHOLOMEW J. REBORE, Lindenhurst, NY (Rebore, Thorpe & Pisarello, P.C., of counsel), for *Plaintiff-Appellant.*

JELTJE deJONG, Assistant County Attorney, Hauppauge, New York (Robert J.

1. Honorable David G. Trager of the United States District Court for the Eastern District of New York, who was originally a member of the panel, recused himself prior to oral argument. *See Murray v. National Broadcasting Company Inc.*, 35 F.3d 45 (2d Cir. 1994).

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Cimino, Suffolk County Attorney, of counsel), for *Defendants-Appellees.*

JACOBS, *Circuit Judge:*

Plaintiff-appellant Cecelia N. Eagleston alleges under 42 U.S.C. § 1983 that the Suffolk County in the State of New York, and the County's police, deprived her of equal protection of the law under the Fourteenth Amendment by failing to protect her from her husband, Thomas Eagleston, despite her numerous complaints that he was harassing her in violation of two orders of protection. In December 1986, Mr. Eagleston stabbed his wife 30 or more times. Mrs. Eagleston's complaint charges that "defendant, County of Suffolk, acting through its police department, condoned a pattern [or] practice of affording inadequate protection, or no protection at all, to women who have complained of having been abused by their husbands or others with whom they have a close relationship."

Mrs. Eagleston has presented her claim to two juries in the Eastern District of New York; the first trial was conducted by Judge Wexler and the second by visiting Judge Tsoucalas (Court of International Trade, sitting by designation). Both juries deadlocked. At the end of the second trial, Judge Tsoucalas entered an order directing a verdict in favor of the defendants then remaining in the case. Mrs. Eagleston's appeal alleges a variety of errors committed in the course of the proceedings. First, Mrs. Eagleston disputes the district court's conclusion that the statute of limitations had expired on her claims against police officers Bugge, Kopf, Kern and Donnelly. Second, she challenges the dismissal of the defendant police officers Ozer, Pesale and Milward on qualified immunity grounds. Third, she challenges several of Judge Tsoucalas's evidentiary rulings, most notably his

refusal to receive in evidence a report prepared by Suffolk County which records a sharp increase after 1987 in the number of domestic incidents resulting in arrest. Fourth, she challenges Judge Tsoucalas's order following the second trial, directing a verdict against her and dismissing the complaint against the County of Suffolk and the County's former Police Commissioner, on the ground that Mrs. Eagleston had failed to produce sufficient evidence to support her equal protection claim. Her remaining arguments do not justify extended treatment.

We affirm the judgment.

BACKGROUND

Mrs. Eagleston's marriage turned violent on October 20, 1986, the day she served her husband with divorce papers. Between then and December 27, 1986, Mrs. Eagleston contacted the police ten times to report harassment and threats against her by Mr. Eagleston. On one occasion, Mrs. Eagleston brought her complaint directly to the police station; on another occasion, a police officer was summoned to a neighborhood restaurant; eight times, police were dispatched to the Eagleston home. During this two month period, Mrs. Eagleston resided on the ground floor of the Eagleston home while Mr. Eagleston sporadically occupied the same house, sometimes with his wife, and sometimes in a basement apartment that the Eaglestons had rented to his sister before divorce proceedings began.[2]

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2. Although the Eaglestons had been living as husband and wife for eight years, their actual marital status was dubious. At trial, Mrs. Eagleston testified that she had never actually been divorced from her first husband. We refer to the Eaglestons as husband and wife for convenience.

Appendix B

Mr. Eagleston reacted to notice of the divorce proceedings on October 20, 1986 by threatening Mrs. Eagleston, by throwing objects at her and by smashing plasterboard walls in their home. Mrs. Eagleston called the Suffolk County police department, which dispatched officers to the house. The officers concluded that an arrest was not justified.

On October 23, 1986, the Suffolk County Supreme Court issued an Order to Show Cause, returnable on November 3, 1986, which included a "temporary order of protection" requiring Mr. Eagleston "to refrain from any acts of violence" towards Mrs. Eagleston or the Eagleston's son, Steven. A second judge of that court extended this order of protection on November 26, 1986, and temporarily granted Mrs. Eagleston "exclusive use of and occupancy of the marital residence." On November 10, 1986, Mr. Eagleston sought and obtained his own temporary order of protection requiring Mrs. Eagleston to refrain from acts of violence against him.

After the initial incident on October 20, Mrs. Eagleston reported incidents involving her husband to the Suffolk County police on November 7, 9, 20, 23 and December 7, 8, 9, 19 and 24. The police responded to all of these demands for assistance. Most of the complaints did not allege physical injury. In each instance, Mrs. Eagleston expressed fear of harm, and in some instances she reported threats by her husband. Prior to the stabbing on December 27, 1986, the only reported knifing took place on November 9, 1986, when Mrs. Eagleston stabbed her husband in the leg with a paring knife; and the only arrests were made on November 23, 1986, when both Mr. Eagleston and Mrs. Eagleston were arrested following an incident in which Mr. Eagleston claimed his wife had violated his order of protection while Mrs. Eagleston claimed her husband had beaten her. Both

Eaglestons subsequently withdrew the charges against each other arising out the November 23 fracas.

On December 27, 1986, following an argument in which Mr. Eagleston charged his wife with infidelity, Mr. Eagleston stabbed her 30 or 33 times with a carving knife.

Mrs. Eagleston filed suit on December 7, 1989 against the County; the Suffolk County Police Department (hereinafter sometimes referenced collectively with the County as the "County"); Police Commissioner Daniel Guido; the former commissioner, Dewitt C. Treder; and ten police officers. Judge Wexler dismissed the claims against two policemen in a ruling that has not been appealed. Plaintiff voluntarily dismissed her claims against another policeman and against Commissioner Guido. On April 22, 1992, Judge Wexler granted partial summary judgment dismissing Mrs. Eagleston's claims against defendant police officers Bugge, Kopf, Kern and Donnelly on statute of limitations grounds, and those against police officer Ozer on the ground of qualified immunity.

In May 1992, the case proceeded to its first jury trial against the County, the former police commissioner and the two remaining policemen. At the close of plaintiff's case, Judge Wexler dismissed the claims against police officers Pesale and Milward on the ground of qualified immunity. The claims against the County and its former police commissioner, Dewitt Treder, were submitted to the jury, which deadlocked after three days of deliberations. Judge Wexler declared a mistrial.

The second jury trial commenced August 11, 1993, Judge Tsoucalas presiding, solely on the issue of the liability of the County and its former police commissioner. After four days of

deliberation, the eight-member panel was able to reach a unanimous verdict on only two issues: first, that the plaintiff failed to prove "by a preponderance of the evidence that Suffolk County and/or [Police] Commissioner Treder had an unconstitutional policy which denied *women* equal protection of the law; and second, that the plaintiff did establish "by a preponderance of the evidence that Suffolk County and/or [Police] Commissioner Treder had an unconstitutional policy which denied *victims of domestic violence* equal protection of the law." (Emphasis added.) The jury was unable to reach a unanimous verdict on whether this "unconstitutional policy" was the proximate cause of Mrs. Eagleston's stabbing injuries. After excusing the jury and declaring a mistrial, Judge Tsoucalas granted defendants' motion for a directed verdict, and dismissed the remainder of the case, explaining his reasoning as follows:

> [T]here is no evidence that this Court heard that there was a policy of Suffolk County or the Police Commissioner that deprived the plaintiff of her constitutional rights. It hasn't been proven at all.
>
> There was testimony showing that some police officers didn't do their job and were negligent in their job and in performing their duties, but that doesn't mean that there was a policy for all police officers to do something, and most of the police officers acted in accordance with the law and in accordance with the Constitution . . . and didn't deprive Mrs. Eagleston of her constitutional rights at all.

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> There is nothing in the facts that I have heard that showed any policy on behalf of Suffolk County or any policy on behalf of the Commissioner.
>
> The fact that the Commissioner didn't know what was going on shows that he wasn't a good commissioner, that he may have been an incompetent commissioner, . . . but it doesn't mean that he had a policy of discriminating against women or discriminating against victims of domestic violence.
>
> There was no testimony whatsoever to show that there was discrimination in domestic violence cases . . . .

In his written order, dated August 25, 1993, Judge Tsoucalas stated simply that he had dismissed the matter because the plaintiff had failed to establish that either the County of Suffolk or Police Commissioner Treder "had a policy of denying women or victims of domestic violence equal protection of the law." Final judgement was entered on November 10, 1993.

DISCUSSION

Mrs. Eagleston raises numerous claims of error, none of which requires a third trial in this case.

A. *Statute of Limitations*

Plaintiff sued individually the policemen who had responded

to her calls for help. Judge Wexler dismissed her claims against four of these officers on statute of limitations grounds. We review *de novo* the grant of summary judgment and all evidence and all inferences to be drawn from the evidence must be viewed in the light most favorable to Mrs. Eagleston. *Prunier v. City of Watertown*, 936 F.2d 677, 679 (2d Cir. 1991).

For § 1983 actions arising in New York, the statute of limitations is three years. *Owens v. Okure*, 488 U.S. 235, 250-51 (1989). Mrs. Eagleston filed suit against the defendants on December 5, 1989, within three years of the December 27, 1986 stabbing but more than three years after the dates on which Officers Bugge, Kopf, Kern and Donnelly acted. Officer Bugge reported to the Eagleston home on October 20, 1986, the day Mr. Eagleston learned of the divorce proceeding. Officer Kopf interviewed Mrs. Eagleston on November 7, 1986 at the police station. Officer Kern responded to a call from Mrs. Eagleston on November 9, 1986, and arrived at the Eagleston home to discover that Mrs. Eagleston had stabbed her husband. Officer Donnelly reported to the Eagleston home on November 20, 1986 to find the Eaglestons arguing over the deed to their house.

Plaintiff argues that, for statute of limitations purposes, the repeated failure of the several police officers to arrest Mr. Eagleston constitutes one continuous two-month wrong which culminated in the December 27 attack.

While state law supplies the statute of limitations for claims under § 1983, federal law determines when a federal claim accrues. *See Cullen v. Margiotta*, 811 F.2d 698, 725 (2d Cir.), *cert. denied*, 483 U.S. 1021 (1987). The claim accrues when the plaintiff "knows or has reason to know" of the harm. *Id.* Plaintiff claims that she did not know, or have reason to know, of the harm

done to her until the knife attack of December 27. However, "the proper focus is on the time of the *discriminatory act,* not the point at which the *consequences* of the act becomes painful." *Chardon v. Fernandez,* 454 U.S. 6, 8 (1981). This Court previously considered this issue in *Singleton v. City of New York,* 632 F.2d 185 (2d Cir. 1980), *cert. denied,* 450 U.S. 920 (1981). The plaintiff in *Singleton* alleged the existence of a conspiracy to violate his civil rights, and contended that the separate acts of the defendants—each of which would have supported a claim for compensatory damages when the act was done—should be viewed as one transaction for the purpose of determining when the statute of limitations began to run. We disagreed:

> The crucial time for accrual purposes is when the plaintiff becomes aware that he is suffering from a wrong for which damages may be recovered in a civil action. To permit him to wait and toll the running of the statute simply by asserting that a series of separate wrongs were committed pursuant to a conspiracy would be to enable him to defeat the purpose of the time-bar, which is to preclude the resuscitation of stale claims.

Id. at 192.

In this case, the wrong alleged was the failure of the four policemen to afford Mrs. Eagleston equal protection of the law when she needed assistance. The district court held that any claim against Bugge, Kopf, Kern and Donnelly accrued on the date that each allegedly failed to protect Mrs. Eagleston, and that the three year period had run at the time Mrs. Eagleston filed her complaint on December 5, 1989.

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Plaintiff contends that the District Court should have allowed a jury to determine when she "had knowledge of both the injury and its connection with the acts of the defendant" and thus when the statute of limitations would have begun to accrue. While she is correct that, in some circumstances, factual issues related to statute of limitations should be put before a jury, *see, e.g., Santiago Hodge v. Parke Davis & Co.*, 909 F.2d 628, 633 (1st Cir. 1990), the statute of limitations issue in this case does not present disputed facts.

Plaintiff argues that her claims for police inaction on prior occasions did not accrue until the December 27 episode in which she suffered the physical injury for which she seeks damages. The district court held that each officer's allegedly improper failure to act was "sufficient to enable plaintiff to realize that she had suffered a compensable injury at that time." Accepting as true that the police culpably failed to arrest plaintiff's husband, time after time, that wrong was done repeatedly, in her presence and to her knowledge. Under *Singleton,* however, the claim does not accrue until "the plaintiff becomes aware that [s]he is suffering from a wrong for which damages may be recovered in a civil action." *Singleton,* 632 F.2d at 192. The district court therefore should have considered specifically as to each defendant at what point Mrs. Eagleston had a compensable claim for the officer's alleged inaction.

It may be that the district court considered that, as to each failure to act, a proven violation would support at least an award of nominal damages, even if she suffered no physical injury or property loss. *See Gibeau v. Nellis,* 18 F.3d 107, 110 (2d Cir. 1994). To affirm on that basis, we would have to hold that nominal damages may be deemed compensable within the meaning of *Singleton.* It is unnecessary for us to reach that

question, however, under the facts presented on this appeal. The four episodes involving officers Bugge, Kopf, Kern and Donnelly all pre-dated November 23, on which date Mrs. Eagleston testified she was beaten. Therefore, by November 23, she had suffered compensable damages in respect of any claim she may have had against those four policemen. Since the complaint in this action was filed more than three years after November 23, 1986, the statute of limitations had expired in respect of the claims against these four defendants. We therefore affirm the district courts order dismissing the complaint against them.

B. *Qualified Immunity.*

The district court held that officers Ozer, Pesale and Milward enjoy qualified immunity, and dismissed the claims against them. We affirm because we agree that it was objectively reasonable for these three officers to believe that they lacked probable cause to arrest Mr. Eagleston.

The claims against Officer Ozer were dismissed on a motion for summary judgment and those against Officers Pesale and Milward were dismissed following presentation of plaintiff's case in the first trial. We review the dismissal of these claims *de novo*. *See Prunier v. City of Watertown*, 936 F.2d 677, 679 (2d Cir. 1991) (review of summary judgment is *de novo*); *Sir Speedy, Inc. v. L & P Graphics, Inc.*, 957 F.2d 1033, 1039 (2d Cir. 1992) ("The same framework [used by the district court] governs appellate review of the granting of a motion for a directed verdict . . .").

Police officers may be held personally liable for damages under 42 U.S.C. § 1983 when, acting under color of state law, they deprive a person of "any rights, privileges, or immunities

secured by the Constitution." However, qualified immunity functions as a judicially-created restraint to the threat of civil punishment. *See Magnotti v. Kuntz,* 918 F.2d 364, 365 (2d Cir. 1990). "Th[is] defense affords not only protection from liability, but, in addition, freedom from suit.' *Id.* at 365 (2d Cir. 1990). Qualified immunity affords government actors broad protection from personal liability "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982). "[W]hether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the 'objective legal reasonableness' of the action, assessed in light of the legal rules that were 'clearly established' at the time it was taken." *Anderson v. Creighton,* 483 U.S. 635, 639 (1987) (citations omitted). We consider the particular circumstances that bear upon the immunity of each defendant.

1. *Officer Ozer.* On December 7, 1986, Mrs. Eagleston telephoned the police because she believed she heard her husband in the Eagleston's basement apartment, which was at the time rented to Mr. Eagleston' sister. Jack Ozer responded to the call. After speaking briefly with Mrs. Eagleston, Ozer went to the basement apartment. Returning upstairs, he informed Mrs. Eagleston that, according to her sister-in-law, Mr. Eagleston was not on the premises. Lacking a search warrant, Ozer said he was unable to enter the apartment without the tenant's permission.

Mrs. Eagleston showed Ozer the November 26, 1986 order of protection granting her "exclusive use and occupancy of the marital residence." Mr. Eagleston then appeared on the front lawn, claiming that he too lived in the basement apartment and paid rent for it. Under these facts, it is difficult to imagine the

crime for which Ozer might have arrested Mr. Eagleston. It was objectively reasonable for Ozer to end his search of the basement upon being denied access by Mr. Eagleston' sister. Furthermore, it was objectively reasonable for Ozer to conclude that the term "marital residence" as used in the order of protection did not include an apartment rented to a third party. When the rights of an aggrieved party are not clearly established, there can be no § 1983 liability. *See Hawkins v. Steingut,* 829 F.2d 317, 319-21 (2d Cir. 1987) (when federal law on an issue was far from "clearly established," individuals acting under color of state law could not be held liable under § 1983). It is at least debatable whether or not the protective order embraced a basement apartment occupied by a tenant. Therefore, Ozer's decision not to arrest Mr. Eagleston on December 7, 1986 was objectively reasonable. We affirm the finding of qualified immunity.

2. *Officer Pesale.* After hearing testimony at the first trial, Judge Wexler concluded that Michael Pesale "did everything he was supposed to have done." Mrs. Eagleston alleged that, on December 8, 1986, Mr. Eagleston attempted to run her down with his car and threatened to beat her up. Pesale responded to the call. He interviewed Mrs. Eagleston at the Eagleston home, and she told him that Mr. Eagleston was not in the house. Pesale filled out a field report charging reckless endangerment and referred Mrs. Eagleston to the Crime Control Unit. He also drove around the neighborhood in an attempt to locate Mr. Eagleston and his car.

Pesale's actions were objectively reasonable under the circumstances, particularly since Mr. Eagleston could not be arrested immediately because he was not there. The district court properly recognized Pesale's qualified immunity.

3. *Officer Milward.* M.P. Milward responded to a

complaint by Mrs. Eagleston on December 24, 1986. She told him that an unseen person had thrown a rock through one of her windows and that she believed it was her husband. She also told Milward that she believed her husband was in the basement apartment. Officer Milward did little to locate Mr. Eagleston. However, even if he had found him, it is doubtful that he could have arrested him, absent some admission or further investigation. Mrs. Eagleston could not identify who threw the rock through her window. It was "objectively reasonable" for Milward to conclude that the order of protection had not been violated. The decision concluding that Milward acted under qualified immunity was proper.

C. *Evidentiary Rulings.*

Mrs. Eagleston claims that Judge Tsoucalas erred in the course of the second trial by (a) refusing to admit the deposition testimony of Police Commissioner Daniel Guido, (b) refusing to hear the testimony of her expert witness while admitting the testimony of the County's expert, and (c) refusing to admit into evidence the County's 1991 Progress Report on domestic violence. We review a district court's evidentiary rulings for abuse of discretion. *United Sates v. Jamil,* 707 F.2d 638, 642 (2d Cir. 1983).

1. *Commissioner Guido's Deposition.* Mrs. Eagleston wanted to demonstrate that a non-arrest policy or practice existed during the administration of former Police Commissioner Treder. She claims that the deposition testimony of the County's police commissioner includes a statement that a non-arrest policy in domestic violence incidents would amount to an equal protection violation, and that this statement constitutes an admission by the County that its pre-existing policy violated the Equal Protection

Clause of the Fourteenth Amendment, presumably a party admission under Federal Rule of Evidence 801(d)(2).

According to the County, Police Commissioner Guido testified that he knew nothing about the arrest policy under former Police Commissioner Treder, but offered his view that a non-arrest policy in domestic violence cases would violate equal protection rights. Guido's legal insights concerning a policy that may or may not have prevailed before he became Police Commissioner do not amount to a party admission under Federal Rule of Evidence 801(d)(2). In any event, his views on that subject would be inadmissible because they are legal conclusions concerning an ultimate issue in the case. *See United States v. Scop*, 846 F.2d 135, 139-40 (2d Cir. 1988). Judge Tsoucalas acted within his discretion in sustaining the County's objection to Commissioner Guido's testimony.

2. *Plaintiff's Expert Witness.* Judge Tsoucalas refused to qualify Mrs. Eagleston's expert, Dr. William Bengston, holding that Bengston was "far from being an expert" on the material in question. In reviewing this decision, we are mindful that "[t]he broad discretion of the trial court to determine the qualifications of witnesses will not be disturbed unless its ruling was manifestly erroneous." *McCullock v. H.B. Fuller Co.*, 981 F.2d 656, 657 (2d Cir. 1992) (citation and internal quotations omitted).

According to Mrs. Eagleston, Bengston would have testified that "while defendant Treder was police commissioner, Suffolk County had a practice of mediation rather than arrest in cases of domestic violence, and that to change the policy from mediation to arrest as Treder was ordered to do by the County Legislature, Treder should have taken certain actions including training and strong supervision." Bengston holds a doctorate in sociology, a credential that does not in itself describe any specific body of

scientific or technical expertise pertinent to this case. The district court found that the plaintiff failed to establish that Bengston was an expert in either criminology or domestic violence. Furthermore, Bengston had no familiarity with New York procedure in general or the practices of the Suffolk County Police Department in particular. Judge Tsoucalas acted within the bounds of his discretion in concluding that someone unfamiliar with arrest practices in New York was unqualified to testify about them.

3. *The Progress Report.* In 1988, the County changed its arrest policy for situations involving domestic violence. Previously, mediation played a significant role in Suffolk County's resolution of domestic disputes. Under the new policy, police officers were directed to arrest anyone who violates an order of protection. Police officers were also directed to arrest whenever the officer had reasonable cause to believe an individual committed a misdemeanor in a domestic dispute, unless the victim prefers that no arrest be made; and, where a felony may have been committed, police officers were directed to effect an arrest regardless of what the victim may prefer or say. Suffolk County Executive Order 1a-1988. In 1991, the Office of the County Executive published a study entitled "Progress Report: A Comprehensive Anti-Domestic Violence Program for Suffolk County," documenting the police department's arrest record in the years following the 1988 change in the domestic violence arrest policy. Other statistical evidence, admitted and summarized at trial, furnishes data on arrests for domestic violence in the period 1985-1987. Although the data for 1986—the year Mrs. Eagleston was stabbed—is not in all respects comparable to the data in the Progress Report, the data can be contrasted, making certain allowances, and a jury easily could conclude from that comparison that arrests in domestic violence incidents rose fivefold between 1986 and 1991.

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Defendants moved to exclude the Progress Report on the ground that it is evidence of a subsequent remedial measure within the meaning of Federal Rule of Evidence 407. Judge Tsoucalas excluded the document from evidence, apparently on the ground that it was immaterial: "I am sustaining the objection. It [the Progress Report] has nothing to do with this case. It has nothing to do with this case as to whether or not they had a policy, what the police officers do and what the police officers did." We consider both the materiality of the Progress Report as well as the Rule 407 argument.

Plaintiff's claim was that the County was engaged in an unconstitutional policy or practice in regard to its treatment of domestic violence. The district court decided that "what the police officers do . . . and did" does not bear upon what the *policy* may have been. Certainly, however, "what police officers do . . . and did" is material to the issue of what the *practice* may have been. The Progress Report documents a sharp increase in domestic violence arrests after 1987, and explicitly states that the County acted to "implement a pro-arrest policy in incidents of family violence and abuse." Standing alone, the Progress Report does not evidence that the County was sluggish in its prosecution of domestic violence incidents during the time Mrs. Eagleston claims the police ignored her pleas for help; the change in the arrest rate could reflect the reluctance of victims to ask that their spouses be arrested or prosecuted, a choice given less deference after 1988. Nevertheless, the Progress Report was material to the issues presented.

At trial, the County argued that the Progress Report should be excluded as a subsequent remedial measure under Federal Rule of Evidence 407. According to the County, admission of the Progress Report would offend public policy because the

increased arrest rate should be deemed a "subsequent measure" taken by the county in an effort to remedy a defective policy or practice.

Other courts have concluded that Rule 407 does apply to policy changes in civil rights cases. *See Maddox v. City of Los Angles,* 792 F.2d 1408, 1417 (9th Cir. 1986); *Specht v. Jensen,* 863 F.2d 700, 701 (10th Cir. 1968); *Luera v. Snyder,* 599 F. Supp. 1459, 1463 (D. Colo. 1934). For several reasons, however, we decline to determine whether it was within the district court's discretion to exclude this document under Rule 407. Appellants have not briefed the issue, and neither party has attempted to explore the public policy values that are implicated on both sides of this issue. Moreover, because the district court based its decision on materiality, it never considered the Federal Rule 407 issue.

Since we conclude that the district court erred in excluding this document on the only ground stated by the court, we proceed on the assumption that the progress report should have been admitted. However, as discussed below, we conclude that Judge Tsoucalas would have been correct to direct a verdict in favor of the County even if the Progress Report had been admitted into evidence.

D. *Directed Verdict.*

Following his dismissal of the deadlocked jury in the second trial, Judge Tsoucalas directed a verdict in favor of Suffolk County and former Police Commissioner Treder because he found that plaintiff had "failed to present any evidence that the defendants . . . had a policy of denying women or victims of domestic violence equal protection of the law." The district court

did not separately address Mrs. Eaglestone's allegation that there was such a practice irrespective of the policy. Judgment as a matter of law should be granted when:

> (1) there is such a complete absence of evidence supporting the verdict that the jury's findings could only have been the result of sheer surmise and conjecture, or (2) there is such an overwhelming amount of evidence in favor of the movant that reasonable and fair minded [persons] could not arrive at a verdict against [it].

Bauer v. Raymark Indus., Inc., 849 F.2d 790, 792 (2d Cir. 1988). An appellate court reviewing the district court's decision to grant a motion for a directed verdict makes the same inquiry. *Sir Speedy, Inc. v. L & P Graphics, Inc.*, 957 F.2d 1033, 1039 (2d Cir. 1992). We affirm the directed verdict in favor of the County and the former Police Commissioner, because, (a) on the basis of the admitted evidence, the jury could not have concluded without conjecture that the County's practice deviated from its stated arrest policy of treating domestic violence the same as other acts of violence; and (b) even if the 'Progress Report is deemed to show that the County's practice deviated from its stated policy, that deviation is insufficient to create a jury issue in the absence of a showing that its purpose was invidious discrimination against women.

Section 1983 provides an instrument by which an individual deprived of a federal right by a person acting under color of state law may be compensated. *Parratt v. Taylor,* 451 U.S. 527, 535 (1981). "It is well established that in order to state a claim under § 1983, a plaintiff must allege (1) that the challenged conduct was

attributable at least in part to a person acting under color of state law, and (2) that such conduct deprived the plaintiff of a right, privilege or immunity secured by the Constitution or laws of the United States." *Dwares v. City of New York,* 985 F.2d 94, 98 (2d Cir. 1993). The defendants do not dispute that the police department was acting under color of state law when it responded to Mrs. Eagleston's complaints. Thus, the only issue contested in this dispute is whether the department's actions violated the Constitution.

The threshold requirement of an equal protection claim is a showing that the government discriminated among groups. Yet the evidence admitted at trial does no more than invite speculation as to whether or not the County had a special arrest policy or practice in cases of domestic disputes. In its defense, Suffolk County argued that the police department's stated policy was that domestic violence incidents were to receive the same police attention as other incidents, and that its practice was no different. At trial, Mrs. Eagleston undertook to show that the practice of the police department deviated from the stated policy. The district court admitted the following evidence on that question, none of which is sufficient to raise a question for the jury:

— *The testimony of Mrs. Eagleston.* Mrs. Eagleston described her encounters with Suffolk County police in the period from October through December 1986. Accepting Mrs. Eagleston's account as true, her testimony showed at most (as Judge Tsoucalas found) that a few police officers failed to perform their jobs well. Her testimony does not evidence a department-wide practice of disparate treatment for domestic disputes. Even on the level of anecdote, Mrs. Eagleston's account is fully consistent with a responsive police department dealing on

an incident-by-incident basis with an ambiguous series of events. The police responded repeatedly. The husband had access to his sister's apartment in the basement of his wife's house, a complication that (the police reasonably understood) allowed him to enter the house without invading the marital premises. After a while, each spouse had an order of protection against the other. The police did make arrests, taking both spouses into custody on November 23. On other occasions, the police were asked to arrest Mr. Eagleston after a rock was thrown by a person Mrs. Eagleston did not see, and were summoned to deal with threats that had not resulted in violence.

— *1984 Suffolk County Legislature's Resolution.* In a clearly non-discriminatory 1984 resolution, Suffolk County directed former Police Commissioner Treder to "press criminal enforcement in cases of family violence' and to make arrests if either an order of protection was violated or there was evidence of a criminal offense by one member of a family against another. The 1984 resolution did not specify a course of action to be taken if the victim of domestic violence did not wish an arrest to be made. This resolution was not a new law, but simply a policy statement that reiterated existing state law.

— *The Former Police Commissioner's Orders to the Police.* In response to the 1984 resolution, the former Police Commissioner issued a Special Order instructing officers that "anytime a Police Officer handles a domestic dispute and there is evidence of a family offense which is either a felony or a misdemeanor being committed by one member of a family against another, a civilian or summary arrest will be made." Former Commissioner Treder issued a further Order in 1985 directing that, "[i]f probable cause exists " that the respondent violated the terms of the Order of Protection, an arrest will be made." These orders were clearly non-discriminatory.

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— *Legislative Minutes.* Prior to adoption of the 1984 resolution, it was debated at an October 1984 meeting of the Public Safety Committee of the County Legislature. The minutes of the meeting, admitted despite defendants' objection that they were inadmissible hearsay, contain observations that some police officers did not enforce the policy regarding criminal domestic violence. They also reflect that the former Police Commissioner was "for the resolution 100%," albeit with one particular caveat: the former Police Commissioner was concerned that the resolution, with its focus on "*criminal* enforcement in cases of family violence," was eliminating the option of family court—an option available under New York state law for domestic disputes involving disorderly conduct, harassment, menacing, reckless endangerment and less serious instances of assault. At trial, the County's attorney referenced "a provision requir[ing] police officers in these incidents to advise the victim of their option to go to family court [in addition to] criminal court." This is doubtless a reference to § 812 of the Family Court Act, which gives a complainant a choice of alternate forums. N.Y. Family Court Act § 812 (McKinney 1983). As the Practice Commentary to § 812 indicates, the family court judge has the discretion to transfer the case to criminal court, notwithstanding the complainants election, if it is clear that criminal sanctions would be appropriate.

— *Raw data on domestic disputes.* At trial, Officers William Murphy and Joseph Kistinger described the data they helped compile on domestic disputes between 1984 and 1987. An examination of the data shows that arrests were made in about 2 of these cases. The County represented at oral argument—and Mrs. Eagleston's counsel did not dispute—that this data included complaints of harassment as well as complaints of assault and violent crimes. The exhibit does not reflect how many of these

cases *could* have resulted in an arrest, but the County's lawyer suggests that in many of these instances there would have been no probable cause to arrest. Mrs. Eagleston's personal experience, as recounted in her testimony, reinforces this conclusion. In the absence of more detailed analysis of the circumstances involved in the recorded incidents, this material is next to useless.

— *Police testimony regarding mediation.* Two police officers testified about their training in mediation techniques. Assuming that such training could support an inference of invidious discrimination in any circumstances, the training given by Suffolk County encompassed mediation for all disputes, not solely for domestic disputes.

The disputed 1991 Progress Report, excluded from evidence by Judge Tsoucalas, would be (if admissible) the only evidence on which plaintiff could begin to build a showing of discriminatory treatment. Although statistical evidence alone is not always enough to establish the existence of a policy or custom, *see McCleskey v. Kemp,* 481 U.S. 279 (1987), the document does include statistics showing a sharp increase in arrests for domestic violence after the 1988 change in policy.

Mrs. Eagleston sought the opportunity at trial to use these later statistics, showing many more arrests, as evidence that the earlier statistics reflect a practice of ignoring domestic assaults. However, nothing in the record supports an assumption that the later statistics reflect a more appropriate level of arrests, or achieve some parity with arrests that do not involve domestic violence. Nor is there any basis for assuming that any variation in the level of arrests was caused by an earlier discriminatory policy rather than by a tendency for victims of domestic violence to forgo pressing charges or to elect proceedings in Family Court.

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On appeal, as in the district court, the County attributes the higher level of arrests to a new policy of making an arrest whenever an order of protection is violated, regardless of the victim's expressed preference.

In presenting its defense, the County argued that its practice was the same as its policy, and that there was no difference between the way its officers treated incidents of domestic violence and the way its officers treated other incidents of violence. The County did not attempt to justify the existence of a discrepancy because it argued there was none. Mrs. Eagleston argues that the Progress Report, viewed in light of the other evidence, shows a sharp change in the arrest rate for domestic violence; and that the County's denial of any discrepancy, and its resulting failure to justify any discrepancy, would have allowed the jury to conclude, as it did, "that Suffolk County and/or Commissioner Treder had an unconstitutional policy which denied victims of domestic violence equal protection of the law."

Even were we to accept Mrs. Eagleston's interpretation of the Progress Report and of the evidence actually introduced at trial, she establishes no more than that on average a claim of domestic violence is less likely to result in an arrest than a claim of violence between strangers. But a plaintiff alleging sex discrimination who seeks to predicate a *prima facie* equal protection claim on a policy that is not facially discriminatory must establish that the intent or purpose of the policy was to discriminate against one sex. *Personnel Adm'r of Massachusetts v. Feeney*, 442 U.S. 256, 274 (1979). The presentation of evidence that the purportedly neutral policy "has a disparate impact upon a group that has historically been the victim of discrimination" can be an "important starting point" in establishing the existence of a Constitutional violation. *Id.* at 273-74. However, viewed in the

light most favorable to Mrs. Eagleston, her evidence (including the Progress Report) does not carry her beyond this starting point. "[T]he Fourteenth Amendment guarantees equal laws, not equal results," and "purposeful discrimination is the condition that offends the Constitution." *Id.* (citations and internal quotations omitted). Discriminatory purpose "implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Id.* at 279. Mrs. Eagleston has not met her burden of proof on this issue. A directed verdict is appropriate in a domestic violence equal protection claim unless the plaintiff adduces evidence sufficient to sustain the inference that there is a policy or a practice of affording less protection to victims of domestic violence than to other victims of violence in comparable circumstances, that discrimination against one sex was a motivating factor, and that the policy or practice was the proximate cause of plaintiff's injury. *See Ricketts v. City of Columbia, Mo.*, 36 F.3d 775, 779 (8th Cir. 1994); *Hynson v. City of Chester Legal Dep't*, 864 F.2d 1026, 1031 (3d Cir. 1988).

Nothing in the Constitution requires that arrest policies be uniformly applied in all situatins. "Because of the inherent differences between domestic disputes and nondomestic disputes, legitimately different factors may affect a police officer's decision to arrest or not to arrest in any given situation." *Ricketts*, 36 F.3d at 781. A community may decide that mediation makes more sense, or is more promising, in disputes between members of the same family, or between neighbors, than in disputes between strangers, or that Family Court or counselling is a useful alternative to the criminal courts in certain situations. These considerations may impact arrest statistics without violating the equal protection clause.

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The statistics presented by Mrs. Eagleston may or may not establish that victims of domestic violence are treated differently; but no evidence offered at trial tends to show that any such distinction resulted from an impermissible discriminatory intent. Absent some evidence of such an intent or purpose, there is no equal protection claim. *See Feeney*, 442 U.S. at 274.

An inference of discriminatory intent cannot be supported simply by some discrepancy between the arrest policy adopted by the County (disclaiming any different treatment for perpetrators of domestic violence) and the actual implementation of that policy by the police. Governments often announce and threaten policies of strict enforcement (and reserve the power to implement such policies) while affording the police measured discretion. *See* Meir Dan-Cohen, *Decision Rules and Conduct Rules: On Acoustic Separation in Criminal Law*, 97 Harv. L. Rev. 625 (1984) (describing two sets of legal rules: conduct rules, which are addressed to the general public and designed to influence behavior; and decision rules, which are directed to the officials who apply conduct rules and which may differ from the publicly announced rules). It may be sound policy to threaten ruthless enforcement even if the community does not always follow through with the promised harshness. Certainly the Constitution allows state actors the flexibility to implement such discretionary policy.

E. *Other Arguments.*

We have carefully considered appellant's other challenges to the district court's rulings and find that these challenges are either without merit or mooted by our disposition of the appeal.

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CONCLUSION

For the foregoing reasons, the judgment of the district court is affirmed.

APPENDIX C — MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK DATED APRIL 22, 1992

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV 89-4083

(Wexler, J.)

CECELIA N. EAGLESTON,

Plaintiff,

-against-

COUNTY OF SUFFOLK, et al.,

Defendants.

MEMORANDUM AND ORDER

APPEARANCES:

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Appendix C

WEXLER, District Judge

Cecelia Eagleston ("plaintiff"), brings this suit under 42 U.S.C. §§ 1983, 1985, 1986 and 1988 against the County of Suffolk, the Suffolk County Police Department, former Suffolk County Police Commissioner Dewitt C. Treder, current Suffolk County Police Commissioner Daniel Guido ("Guido"), Detective Rivera ("Rivera"), and Suffolk County Police Officers Brian R. Bugge ("Bugge"), Edward Kopf ("Kopf"), Paul Kern ("Kern"), Dennis Donnelly ("Donnelly"), Jack Ozer ("Ozer"), Michael Pesale ("Pesale"), Daniel Moore ("Moore"), M.P. Milward ("Milward") and James Rooney ("Rooney") (collectively, "defendants"). Plaintiff alleges that defendants violated her rights to equal protection of the law and equal privileges and immunities as guaranteed by the Fifth, Ninth and Fourteenth Amendments by their policy of refusing to arrest her husband, who, she alleges, continuously threatened her and attacked her in violation of two Orders of Protection.[1] Plaintiff also brings pendent state claims based on negligence.

Now before the Court is defendants' motion, pursuant to Rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure, to dismiss the negligence cause of action and to dismiss all individually named police officers. For the reasons stated below, the motion is granted in part and denied in part.

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1. Plaintiff does not explain, and this Court therefore does not address, the applicability of the Fifth and Ninth Amendments to the facts of this claim. It should also be noted that defendants do not accept the validity of plaintiff's Orders of Protection. For the purposes of this motion, however, the Court will assume that the Orders were valid.

Appendix C

I. BACKGROUND

The following material facts are derived from plaintiff's Complaint and her Affirmation in Opposition to the instant motions.

On or about October 20, 1986, plaintiff commenced divorce proceedings against her husband, Thomas Eagleston, and he responded by throwing objects at her and by smashing plasterboard walls and breaking a door in the basement of their residence. Plaintiff called the Suffolk County Police and police officers went to the marital residence, interviewed plaintiff and her husband, and determined that there were no grounds on which to make an arrest.

Subsequently, plaintiff sought an Order of Protection against her husband, and on October 23, 1986, the Honorable William R. Geiler, a Suffolk County Supreme Court Judge, signed an Order to Show Cause, returnable on November 3, 1986, which included the following "temporary order of protection": "for good cause shown, pending the return date of tnis motion, let the defendant be ordered to refrain from any acts of violence towards the plaintiff or the infant Steven D. Eagleston."

On November 7, 9 and 20, 1986, plaintiff called the Suffolk County Police in response to alleged assaults, personal threats and/or destruction of her property by her husband. Her husband was not arrested.

On November 26, 1986, as a result of a contempt proceeding initiated by plaintiff which alleged violations of Judge Geiler's Order of October 23, 1986, the Honorable Judge Ralph Yachnin, a Nassau County Supreme Court Judge sitting by designation in

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Suffolk County, signed an Order providing that Judge Geiler's "temporary order of protection" be continued until December 8, 1986, or such further adjourned date as the Court may grant and providing plaintiff "exclusive use and occupancy of the marital residence, located at 210 Irving Street, Central Islip, New York."

Plaintiff alleges that on November 27, 1986, her husband began living in a room in the basement of the marital residence and that she saw him entering his sister's apartment, which was also located in that basement, on several occasions. Plaintiff further alleges that her husband's assaults, threats and destruction of her personal property continued, and specific incidents were reported to the Suffolk County police on December 7, 8, 9, 10 and 24, 1986. Plaintiff's husband was not arrested. Tragically, on December 27, 1986, Thomas Eagleston entered the marital residence and stabbed plaintiff thirty-three times with a cutlery knife.

Plaintiff alleges that the failure of the police officer defendants to arrest her husband for the alleged violations of her Orders of Protection were intentional acts of discrimination against her as a woman, and/or as a complainant against her spouse, pursuant to an unofficial Suffolk County Police policy and in direct contravention to official Suffolk County Police Department policy as set forth in General Order No. 85-20, dated September 19, 1985, which states in relevant parts:

> 16.11.1 The presentation of a Family or Criminal Court Order of Protection to a Member of the Force by the petitioner constitutes authority to take the person named therein, (the respondent) into custody for an alleged violation of the terms stipulated

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thereon, the petitioner being the complainant. If probable cause exists that the respondent violated the terms of the Order of Protection, an arrest will be made. There will be no attempts to reconcile or mediate the situation.

. . . .

16/11.1B In a situation where the respondent is not at the scene, (although a respondent may be taken into custody at any place not necessarily at the scene of the alleged violation) the police officer will advise the petitioner of the following options, depending on which Order of Protection applies:

1. Family Court Order of Protection; the petitioner can respond to the Probation Intake Unit in Hauppauge and file a petition, violation of Order of Protection.

2. Criminal Court Order of Protection; the petitioner can respond to the precinct Crime Control Section and file a complaint in accordance with existing laws and procedures.

Plaintiff commenced the instant action on December 5, 1989.

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II. DISCUSSION

In response to defendants' motion for dismissal/summary judgment, plaintiff agrees that her pendent state claims should be dismissed. She also consents to the dismissal of defendants Guido and Rivera. Accordingly, plaintiff's state claim and all claims against Guido and Rivera are dismissed.

A. *Statute of Limitations*

The parties agree that the instant action was commenced on December 5, 1989 and that a three-year statute of limitations is applicable. *See Owens v. O'Kure,* 488 U.S. 235 (1989). It is also undisputed that the claims against police officers Bugge, Kopf, Kern and Donnelly are based on incidents occurring more than three years prior to the commencement of this suit. Plaintiff notes, however, that a 1983 action does not accrue until a plaintiff knows or has reason to know that she has been injured, and knows or has reason to know who has inflicted the injury. *Mullinax v. McElhenney,* 817 F.2d 711, 716-17 (11th Cir. 1987) (§ 1983 action could include claim based on prosecutors' attempts at entrapment which occurred beyond the statute of limitations period when plaintiff had no reason to suspect defendants until a date not barred by the statute). Plaintiff contends that she suffered her injury on December 27, 1986, when her husband repeatedly stabbed her, and that she could not have been aware of any injury due to the failure of police officers to arrest her husband prior to that date. This Court disagrees. In *Singleton v. City of New York,* 632 F.2d 185 (2d Cir. 1980), *cert. denied,* 450 U.S. 920 (1981), the plaintiff alleged a conspiracy to violate his civil rights and contended that the defendants' separate wrongs should be treated as a single transaction for accrual purposes. The Second Circuit, however, held to the contrary.

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> The crucial time for accrual purposes is when the plaintiff becomes aware that he is suffering from a wrong for which damages may be recovered in a civil action. To permit him to wait and toll the running of the statute simply be asserting that a series of separate wrongs were committed pursuant to a conspiracy would be to enable him to defeat the purpose of the time-bar, which is to preclude the resuscitation of stale claims.
>
> . . . .
>
> Where no single act is sufficiently decisive to enable a person to realize that he has suffered a compensable injury, the cause of action may not accrue until the wrong becomes apparent. This may occur, for instance, where a person contracts silicosis as the result of ingesting infinitesimally small amounts of coal dust of a period of years, or gradually becomes disabled as the result of operating a defective hammer. But no such claim is made here.

Id. at 192-93 (citations omitted); *see also Jones v. Coughlin*, 665 F. Supp. 1040, 1044 (S.D.N.Y. 1987) (applying *Singleton* to §§ 1983 and 1985 claims by an inmate who alleged that prison officials harassed him over a period of several years); *cf. Mullinax*, 817 F.2d at 717 n.4 (noting that the court did not address plaintiff's claim that defendants committed a "continuing tort").

In the instant case, plaintiff alleges that by failing to arrest

her husband, each of the police officer defendants violated her constitutional rights to equal protection under the Fourteenth Amendment. Assuming that plaintiff's rights were violated in this way, this Court holds that the officers' allegedly improper failures to act were sufficient to enable plaintiff to realize that she had suffered a compensable injury at that time. Moreover, as plaintiff knew or could easily have discovered the identities of Officers Bugge, Kopf, Kern and Donnelly at the time she sought their assistance, her cause of action against them accrued as of that time, not at the later date when she was physically injured by her estranged husband. Accordingly, plaintiff fails to satisfy the statute of limitations as to defendants Bugge, Kopf, Kern and Donnelly, and they are therefore dismissed.

B. *Failure to State a Cause of Action*

1. *Officer Rooney*

The only reference in plaintiff's Complaint to Officer Rooney is that he arrived at plaintiff's house on December 27, 1986, after her husband had attacked her, and that Officer Rooney was not able to arrest her husband because he had already fled. Clearly, this does not state a cause of action. Accordingly, defendants' motion to dismiss this action as to Officer Rooney is granted.

2. *Officer Moore*

According to the Complaint, on December 7, 1986, plaintiff called the police, complaining that her husband was violating her Order of Protection. Officer Moore responded, concluded that there was no violation of the Order of Protection, made no investigation and left. However, in her deposition testimony,

plaintiff states that this event actually took place two days later, on December 9, 1986, and that she does not remember what prompted the call or whether her husband was on the premises.

Similarly, in his deposition testimony, Officer Moore states that he has no independent recollection of the events involving plaintiff and his testimony is based on his field report, dated December 9, 1986. He does not recall, and his report does not indicate, the basis of plaintiff's belief that her Order of Protection was violated. The report does state that after speaking with plaintiff at her home, he and his partner searched the premises, including the basement, for her husband but did not find him. He concluded that her Order of Protection was not violated.

Where both parties have testified that they have no independent recollection or the material facts and the official report indicates that the defendant police officer participated in a search of plaintiff's premises before concluding that there was no violation of her Order of Protection, plaintiff has failed to state a cause of action. Furthermore, even assuming *arguendo,* that plaintiff can state a cause of action against Officer Moore, under these facts he would be entitled to qualified immunity. *See infra.* Accordingly, defendants' motion to dismiss this action as to Officer Moore is granted.

C. *Qualified Immunity*

Qualified immunity shields governmental officials performing discretionary functions from civil liability if the conduct complained of does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982). Whether an official is protected by qualified immunity is

determined by the objective reasonableness of the action, assessed in light of the legal rules that were 'clearly established' at the time it was taken." *Anderson v. Creighton,* 483 U.S. 635, 639 (1987) (citation omitted); *Washington Square Post No. 1212 American Legion v. Maduro,* 907 F.2d 1288, 1291 (2d Cir. 1990).

Qualified immunity is not only a defense to liability, but also a "protection against having to defend a lawsuit." *Magnotti v. Runtz,* 918 F.2d 364, 367 (2d Cir. 1990); *Warren v. Dwyer,* 906 F.2d 70, 74 (2d Cir.), *cert. denied,* 111 S. Ct. 431 (1990). Moreover, [t]he Supreme Court has expressly encouraged the use of summary judgment when qualified immunity is raised as a defense." *Cartier v. Lussier,* 955 F.2d 841 (2d Cir. 1992) (citing *Harlow,* 457 U.S. at 815-16).

Defendants contend that although Police Officers Pesale, Milward and Ozer did not arrest plaintiff's husband in response to her complaints, their actions were objectively reasonable under the facts and law at the time of those decisions, and they are therefore entitled to summary judgment on the basis of qualified immunity. *See Hynson v. City of Chester Legal Dept.,* 864 F.2d 1026, 1032 (3rd Cir. 1988) ("a police officer loses a qualified immunity to a claim that a facially neutral policy is executed in a discriminatory manner only if a reasonable police officer would know that the policy has a discriminatory impact on women, that bias against women was a motivating factor behind the adoption of the policy, and that there is no important public interest served by the adoption of the policy").

Plaintiff responds that although Suffolk County Police Department may have a facially neutral policy as to arresting men who harass or assault their wives, the defendant police officers — pursuant to an unofficial policy — intentionally discriminated

against her as a woman and/or because she was in a domestic relationship. Plaintiff, relying on *Mody v. City of Hoboken*, 758 F. Supp. 1027, 1033 (D.N.J. 1991), contends that defendants are not entitled to a qualified immunity defense because she has alleged that they intentionally discriminated against her. *See also Gutierrez v. Mun. Ct. of S.E. Judicial Dist.*, 838 F.2d 1031, 1051 (9th Cir. 1988), *cert. granted and judgment vacated as moot*, 490 U.S. 1016 (1989); *Goodwin v. Circuit Court of St. Louis County*, 729 F.2d 541, 546 (8th Cir. 1984), *cert. denied, sub. nom., Corrigan v. Goodwin*, 469 U.S. 828 (1984).

Unfortunately, plaintiff fails to cite *Rodriguez v. Board of Educ. of Eastchester Union Free School Dist.*, 620 F.2d 362, 366-67 (2d Cir. 1980), in which the Second Circuit held that qualified immunity *does* apply in a 1983 action alleging intentional sex discrimination. Of course, of the above cited cases, only *Rodriguez* is binding on this Court. Consequently, this Court will examine the claims by defendant police officers for qualified immunity.

1. *Officer Ozer*

According to plaintiff's complaint and deposition, on December 7, 1986, plaintiff called the Suffolk County Police because she heard her husband in his sister's basement apartment, he was harassing her, and she was frightened and wanted him arrested. Officer Ozer responded to the call. According to plaintiff's deposition, Officer Ozer spoke to her and then went down to the basement. When he came upstairs again he told plaintiff that he spoke to her sister-in-law and she told him that plaintiff's husband was not in her apartment. Officer Ozer then explained to plaintiff that he could not enter the basement apartment to search for her husband unless invited in by the tenant.

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According to Officer Ozer's deposition, he met plaintiff on the front lawn. She showed him her Order of Protection which stated that she was to have "exclusive use and occupancy of the marital residence," and sought her husband's arrest. Her husband then came onto the front lawn and, responding to Officer Ozer's questions, he explained that he lived in the downstairs apartment and paid rent. Plaintiff agreed that he lived there and Officer Ozer determined that he could not make an arrest under those circumstances.

Under plaintiff's version of these events, this Court finds that Officer Ozer made a reasonable investigation regarding Thomas Eagleston's presence in the basement apartment, but was unable to proceed further because he was told by the tenant that Thomas Eagleston was not there and he had no warrant to search for him in the rented basement apartment.

Under Officer Ozer's version or these events, this Court finds that it was objectively reasonable for him to conclude that Thomas Eagleston was not in violation of plaintiff's Order of Protection because her husband had not harmed her, there was no evidence that he had threatened her, and he was apparently renting a room in the basement of the house. Moreover, it was objectively reasonable for Officer Ozer to conclude that the term "exclusive use and occupancy of the marital residence" in plaintiff's Order of Protection did not apply to a separate, income-producing basement apartment. Accordingly, this Court finds that under either version, Officer Ozer's failure to arrest Thomas Eagleston on December 7, 1986 was objectively reasonable and he is therefore entitled to qualified immunity.

2. *Officer Pesale*

According to plaintiff's complaint, on December 8, 1986, Thomas Eagleston threatened her and then attempted to run her over with his car, driving it up onto the front lawn of a neighbor's house. When Officer Pesale responded to her call, she advised him of her Order of Protection and sought her husband's arrest. However, Officer Pesale refused to look for her husband in the basement apartment.

Plaintiff's deposition testimony as to these events differs significantly. In that version, plaintiff states that she reported this incident at the precinct; that her son, Steven, informed the police that his father was living in the basement; and that she is not certain as to whether or not the police went to the basement apartment to try to find her husband.

Officer Pesale's version of these events is in sharp contrast to both of plaintiff's versions. Officer Pesale states that he responded to a radio call, spoke to plaintiff, attempted, unsuccessfully, to locate her husband in the basement apartment, and advised plaintiff to contact the Crime Control Unit if she wished to have her husband arrested.

Rule 56(c) of the Federal Rules of Civil Procedure provides "that summary judgment shall be rendered only when a review of the entire record demonstrates that there is no genuine issue as to any material fact." Moreover, "factual allegations backed by affidavits or other evidence made by the party opposing the motion are regarded as true and are viewed in the light most favorable to the non-movant." *Cartier,* 955 F.2d at 846 (citations omitted).

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This Court finds that under plaintiff's version(s) of the events of December 8, 1986, as viewed in the light most favorable to her, it was not objectively reasonable for Officer Pesale to refuse to go to the basement apartment to investigate as to whether her husband was there. Accordingly, Officer Pesale is not entitled to qualified immunity at this time.

3. *Officer Milward*

According to plaintiff's complaint and deposition, on the evening of December 24, 1986, she called the Suffolk County Police because she had received numerous telephone threats from her husband and because a rock was thrown through the window in the front room of the marital home. When Officer Milward responded, she advised him that she had an Order of Protection and that she sought her husband's arrest. She also advised him that she had called the police earlier in the day due to other threatening phone calls from her husband and another rock which had been thrown through a window in the house. Furthermore, she stated that she was certain that her husband was in the basement apartment. Officer Milward asked her if she saw her husband throw the rock and she said that she did not. Officer Milward (like the officers who responded to plaintiff's earlier call that day) made a note of plaintiff's belief that her husband was in the basement, but refused to go downstairs to investigate.

In his deposition, Officer Milward states that he has no independent recollection of the events of December 24, 1986, and his testimony is based on the report that he made at that time. According to that report, Officer Milward spoke to plaintiff and ascertained that the broken window could be related to a marital dispute. He does not recall being advised of plaintiff's Order of Protection or of any other incidents regarding Thomas Eagleston.

He states that he did not search the premises for plaintiff's husband because he came to investigate a report of criminal mischief and he lacked probable cause. He filed his report with the Crime Control Unit for follow-up.

This Court finds that under the above-described circumstances, it was not objectively reasonable for Officer Milward to have refused to go down to the basement apartment to further investigate plaintiff's allegations. Admittedly, it is unlikely that such an action would have led to Thomas Eagleston's arrest for violation of his wife's Order of Protection. However, read broadly, plaintiff's Complaint alleges not only that defendants failed to arrest her husband, but also that they failed to properly investigate her allegations against him. Accordingly, Officer Milward is not entitled to qualified immunity at this time.

III. CONCLUSION

For the aforementioned reasons the pendant state action is dismissed and plaintiff's action is dismissed as to Guido. Defendants' motion for dismissal/summary judgment pursuant to Rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure is granted as to defendants Rivera, Bugge, Kopf, Kern, Donnelly, Ozer, Moore and Rooney. The motion is denied at this time as to defendants Pesale and Milward.

SO ORDERED.

s/ Leonard D. Wexler
LEONARD D. NEXLER
UNITED STATES DISTRICT JUDGE

Dated: Hauppauge, New York
April 22, 1992

APPENDIX D — EXCERPTS OF MINUTES OF PUBLIC SAFETY COMMITTEE OF THE SUFFOLK COUNTY LEGISLATURE

PUBLIC SAFETY COMMITTEE

OF THE

SUFFOLK COUNTY LEGISLATURE

Minutes

A regular meeting of the Public Safety Committee was held at the Suffolk County Legislature Building on Wednesday, October 3, 1984 at 9:50 a.m., Hauppauge, New York.

PRESENT:
Legis. P. Mahoney, Chairman
Legis. D. Allgrove, Member
Legis. R. Caracappa, Member
Legis. M. D'Andre, Member
Legis. P. Heaney, Member
Legis. W. Prospect, Member
Legis. S. Englebright, Member
Legis. P. Nolan
Legis. J. Rizzo
Legis. J. Devine
R. Hart, Petroluem Discounters Assoc.
G. M. Hensas, Law Dept.
S.Spinosa, Brentwood resident
K. Mongan, Co. Exec./Personnel & Labor Relations
C. McNally, Consumer Affairs Dept.
F. Bossert, SC Probation Dept.
T. Appolaro,, County Executive's Office
R. Hilbert, Consumer Affairs Dept.
H. Davis, Fire Rescue Service

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C. Gardner, Weights & Measures
K. Rooney, Oil Heat Institute of L.I.
Ralph F. Costello, Legal Aide Soceity of Suffolk
E. Borghardt, representing the Presiding Officer
D. C. Treder, Commissioner, SC Police Department
G. Kelley, County Attorney's Office
M. Mahoney, P.B.A.
R. Sabatino, Counsel to the Legislature
R. Brand, NEWSDAY
M. Fallon, Consumer Affairs
J. V. Bilello, Emergency Preparedness
K. A. Parlino-Marston, NEWSDAY
E. Flaherty, District Attorney's Office
J. Ligouri, County Exec. Criminal Justice Coorinating Council
T. Ribaudo, CSEA, Health
K. Russano, Long Island Women's Coalition
W. Covino, Under Sheriff
H. Berger, Parks Dept.
P. McAlevey, Legis. Aide
R. Tiffany, Legis. Secy.
M. Fleming, Attorney
J. Corrarino SC Health Dept

Legis. Mahoney announced the Public Safety Committee's budget hearing would be held in the Legislature's auditorium at 9:00 a.m. on October 25th, 1984.

* * *

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I.R. 1950-84-TO REQUIRE THE SUFFOLK COUNTY POLICE TO PRESS FOR CRIMINAL ENFORCEMENT FOR FAMILY ASSAULT CASES.

Comm. Treder came forth to report that he himself and part of the rules and procedures of the Department have stressed on any type of abuse, assault or harassment is not condoned by the Department. Comm. Treder is for this resolution 100%. However, there are some technicalities that he is not in agreement with.

The first RESOLVED clause – "RESOLVED, that the Suffolk County Commissioner of Police is hereby authorized, empowered, and directed to press *criminal* enforcement in cases of family violence;". Comm. Treder did not agree that the word "criminal" should be the only recourse. People involved in these type of problems also have the option of family court and he felt that should be included along with the option of district court, the court used in the instance of a criminal matter. The other necessary ingredient was to create a 24-hour record service. Each precinct should have on file the orders of protection relative their area and they should be up to date. There is a problem in that 5 towns do not fall into the orders of protection. It seems the Sheriff would have to make the same effort. Comm. Treder felt the solution to this problem is that if all of this information were automated and kept in one central location and in that way the officer would be able to check on the document. It was stated that NEWSDAY checked with Nassau County to find out how they handle this problem and there doesn't seem to be any complaints as to their handling of the problem.

Legis. Prospect commented on the fact that the policeman's way of handling this type of case is that unless the actual assault is witnessed by him they cannot make an arrest. Comm. Treder

stated he speaks for the Department and the law is there and it will have to be enforced. Legis. Rizzo's complaint was that when the police arrive, nothing is done and they are sent back into their home to await another beating. Perhaps this resolution will make it law. Legis. Rizzo asked Comm. Treder if he had ever sent out a directive to take care of this? Comm. Treder's reply is that he has not received any complaints up until now. Legis. Caracappa recalled a complaint received in her office and the woman had called the police and nothing was done, why did the policeman have this reaction? Comm. Treder wanted to know specific information on this, who was it? Legis Caracappa related the set of circumstances previously mentioned and that being the police officer did not witness the beating. Comm. Treder insisted the police officer does not have to witness anything and he wanted the record to reflect that he is behind I.R. 1950-84 100%.

Legis. Caracappa's understanding is that when the police are receiving their training they are not trained how to handle domestic violence.

Legis. Heaney at this time suggested this resolution be tabled for two weeks so that the Commissioner would be able to get together with the Counsel to the Legislature and discuss the resolution. Legis. Mahoney reminded everyone that there are other people present that want to address the Committee on this subject. Legis. Rizzo suggested that the Commissioner discuss it with Mr. Sabatino now.

Mr. Sabatino mentioned to the Commissioner that he had a question about the first RESOLVE clause where it states that the Suffolk County Commissioner of Police is herby authorized, empowered and directed to press criminal enforcement in cases of family violence. Comm. Treder reiterated there is an option

and that is that the matter be brought to Family Court and he thought this option was being taken away from the individual by this language. Mr. Sabatino stated that if the Commissioner was having a problem with this language it could be changed to more clearly express the intent of Legis. Rizzo, to make sure that the policy the Police Department is carrying out is more vigorous criminal enforcement. What the individual's options are on his or her own is not what this legislation is about. Legis. Rizzo is trying to say that we should vigorously pursue the criminal aspect and if Comm. Treder does not think the language is clear on this point, this can be addressed. Comm. Treder still argued his point in saying that he thought when a local law is passed, such as this, the option of going to Family Court is not there. Mr. Sabatino understood, however this is directing the action of the police officer and making his reaction to such incidents more strict, more narrow an avenue to pursue. Comm. Treder still insisted this option of Family Court was removed. Mr. Sabatino stated he authored this language to conform with Legis. Risso's intent. If he and other Legislators can arrive at another consensus this can be addressed again.

Comm. Treder then suggested that as long as the Police Department was being addressed in this resolution he thought the District Attorney's office and the courts be addressed in this legislative action due to the fact that there is a criminal justice system, not just one individual at the entrance point. Mr. Sabatino understood the request, however the jurisdiction of the Suffolk County Legislature is somewhat limited. Comm. Treder suggested a policy should be set for the entire system. Mr. Sabatino again explained it was impossible to set policy for things the Legislature does not have any jurisdiction over. The explanation of the language is that Mr. Sabatino has articulated Legis. Rizzo's intent. Legis. Rizzo then explained that if a woman

calls the police and when they arrive and she declares to the policeman that her husband has beaten her or my wife beat me, i.e. whoever did the beating will be locked up. This could happen to anyone's daughter and if a father went and took care of the person that did the beating they would be incarcerated.

Legis. Allgrove wanted to know if this resolution was duplicative? Comm. Treder said this is already on the books. Comm. Treder related his experiences as a police officer and this has always been a problem and as Commissioner he is very willing to reinforce it, whatever you direct should be done the Commissioner will gladly do, because he is in full agreement. Legis. Rizzo has done a great deal of research on this subject by talking to policemen and their standard position is that it is an argument between spouses, therefore you don't get involved. The Commissioner stated there is a matter of not getting involved in a family affair if there is no assault or harassment involved, that's another story, when you get involved in an argument with someone who has called the police and there isn't any assault involved and then he asked how action would not take place if assault has occurred, he couldn't understand that. Legis. Rizzo cited a case where a woman was beaten, left the home and went into a shelter for battered women and the result of this was nothing was done because no one had witnessed the assault, which had resulted in a concussion for this woman. Comm. Treder stated he had read an article stating that the shelter the abused had been taken to remarked on the total cooperation of the SC P.D. Comm. Treder then reported he would reinforce this on the street and he is in total agreement with what is being reported here today.

Legis. Mahoney asked if there was anyone else in the audience that wanted to contribute to this discussion and Ms. Kim Marston

came forth and stated she is a battered wife. Ms. Marston has called the police on many occasions and they have done nothing. Comm. Treder wanted to know if she had taken any other precautions. Ms. Marston stated she had an order of protection. Comm. Treder was very frustrated by this testimony because there wasn't any information on who the officers were that did not respond properly. Ms. Marston also commented that there are good officers out there, in fact it was a policeman that suggested her getting the order of protection. Comm. Treder then asked where Mr. Marston is and he is still in the home, however an exclusion order will be forthcoming from the court on October 23rd.

Ms. Marston asked the Legislators to please consider the severity of violence within the home environment. Violence – constitutes all aspects of violence both physical and psychological. Physical injuries in most instances will heal, but psychological damage does not heal as rapidly and more often effects the entirety of the individual, interfering with normal mental processes.

In most instances children witness this violent behavior and are victimized and end up being raised in a negative home environment. It is often the psychological part of the child that is damaged and become accepting of this behavior and often perpetuate it. Violence affects the children in the following ways, they become insecure distrustful and eventually act out the violence they have observed in growing up. Ms. Marston's own children have developed poor eating habits, stuttering, reclusive behavior which brings about the lack of socialization skills, etc. The end result is that the youngsters in these homes are ruined.

Ms. Marston's husband was the victim of violence, therefore she as his wife and their two little girls are now victimized. Ms.

Marston pleaded with the Legislators present to end this horror, really consider the resolution before you and help to preserve the family unit as a wholesome environment – one that will perpetuate a wholesome environment for youngsters.

Ms. Marsh ended by saying this legislation is really needed.

Legis. Mahoney queried Ms. Marston on the fact that she did not want him arrested-the fact that he is working she did not want him to lose his job by being put in jail, the child support is needed. Legis. Mahoney advised that public assistance is available in instances such as this, but Ms. Marston did not want to change her standard of living and did not want to give up her home. Ms. Marston did not think that she and the children should leave the home – he should leave the home. Ms. Marston did leave her home with the children for one weekend and it cost $200. Ms. Marston has inquired about public assistance and it turns out the SC DSS would end up with a lien on her home. Comm. Treder reminded Ms. Marston that if she did not want her husband arrested and to just remove him from the home would not solve the problem, as he would continue to return, therefore there has to be a better way. Legis. Mahoney concurred with the Commissioner and thought the entire criminal justice system should be involved.

Mr. Kelley from the County Attorney's office was called forward to offer an opinion and he stated the resolution was a good idea, however it needs fine tuning in certain areas. Mr. Kelley reported he had met with counsel before this meeting and they think the scope of the order of protection has to be looked at because an order of protection can be issued, not only to spouses, but to mothers against children, fathers against children, inlaws, grandparents. Section 812 of the Family Court Act needs to be

looked at because literally everyone in a household is eligible for an order of protection. Mr. Kelley checked with the Family Court and this year they have taken in 1,800 family offense cases. For each of these cases there is one order of protection, however sometimes there are two or three. The reason for reporting this is that when one part of the criminal justice system is leaned on it impacts in another area of the system. The population of Nassau is 1.4 million, Suffolk 1.3 million, Suffolk's Family Court is the second busiest in the State right after Kings County. This might have to do with the socio-economic status of our population or it might have to do with the age category. Nassau County has 8 Family Court judges, Suffolk 10. JD cases in Nassau amount to 900 per year, Suffolk, 2,000 per year. No. 842 of the Family Court Act is the authority that is used to set down exactly what is used in the order of protection. When this is read it is very precise, for instance it sets the hours as to when the party that the order is written against is allowed to come to the home, it sets conduct they are supposed to be engaged in, etc. This is the reason the resolution has to be fine tuned because the order of protection is so precise, therefore sections of the Family Court Act should be reviewed because it impacts on what is trying to be done through this resolution. The County Attorney's office is of the opinion that the County Legislature can direct the Police Commissioner to enforce certain laws, the way this resolution is trying to do it. The County Attorney's office believes it is all right to give the Police Commissioner a very strong statement of policy, if there isn't one in place, however Mr. Kelley believes there is one in place. Mr. Kelley then reported the County Attorney's office is concerned about liability. The Office believes that before anyone is arrested summarily on an order of protection that the complainant, usually the wife, must sign a civilian arrest complaint form in order to protect liability. If this document goes forth the way it is now could bring about certain officers to enter a

situation and merely state to the alleged offender they are under arrest and Mr. Kelley did not think this would be right.

Legis. Rizzo then asked Comm. Treder how many people were arrested for wife or husband beating in the last year? Comm. Treder reported this kind of case would be in the category of assaults and those numbers are readily available. Legis. Rizzo repeated Comm. Treder's words that it is the policy of the Department to arrest these people, however Legis. Rizzo does not see any evidence of it being done. Legis. Rizzo then queried Comm. Treder as to when he was a patrolman did he ever arrest anyone for this offense? He answered affirmatively. Comm. Treder then reiterated that he will enforce this and he is in total agreement. Also, if there is anyone not following departmental policies hen tile Commissioner wants to know who they are. If he doesn't know who they are there is no way he can take any action.

Legis. Mahoney then queried the Commissioner if there would be a way to keep family assaults separate from other assaults and if so, would it be beneficial? Comm. Treder stated in light of what is happening it would be beneficial. Legis. D'Andre suggested coding this offense in a special way. The Commissioner stated he would get back to the Committee on this suggestion.

Legis. Allgrove advised he was certainly against brutality, but in view of what has been reported previously he did not think it was a good idea for a policeman to just enter a house and state whomever is under arrest, therefore this resolution should not be passed post haste, more thought should be given to it. Legis. Rizzo explained that if a wife has been beaten, calls the police, the wife then makes the complaint and has the husband arrested on her say-so. In this instance the SC P.D. cannot be sued because the wife initiated the arrest. Legis. Engelbright stated he thought it is

important that this initiative which itself is important has general support, including his, in concept, therefore at Mr. Kelley's suggestion it should be fine-tuned and done right, so that in the effort to provide as vigorous as possible a mechanism for solving the problem, formerly described, that we do no simultaneously deprive the victims of this type of violence from access to a balanced forum for their corrective action. It has already been explained by Mr. Kelley and the Commissioner that if the language were fine tuned, the access to the Family Court along with the criminal court proceedings could be maintained in a coherent manner. Legis. Englebright thought this to be very important, therefore this should be tabled for two weeks in order for this to be accomplished.

Legis. Prospect then requested Comm. Treder to send a memorandum to every police officer to cover the subject discussed here today. Comm. Treder agreed to do so to reinforce this issue and commented this type of request is made of him many times throughout the year regarding other laws. Legis. Prospect then said this should not be done exclusive of the legislation, which he does support. Legis. D'Andre commented that this law is needed so that the policeman does not use his own discretion in these instances and doesn't enforce the law. Legis. D'Andre did agree that the language had to be fine tuned, however the memorandum from the Commissioner should go forth so the women that are being victimized can be protected.

Legis. Rizzo asked Mr. Sabatino if he could affect the changes and he stated that as long as there was a consensus for the changes he would be happy to do so. Mr. Sabatino did not agree with the change in the first RESOLVE clause that Legis. Englebright mentioned; i.e. including Family Court. However, it can be done. Mr. Sabatino thought Mr. Kelley's suggestion of the violation of

the protection order is valid, if the sponsor and the Committee agree, that could be brought down to make it a little less broad than it currently is. Mr. Kelley then elected to make the first change suggested, when an officer enters a violent situation and asks the person, do they want to go into criminal court or Family Court? Sometimes a decision is not made at the time of the incident, however a decision as to which court the victim wants to register their complaint has to be made within 72 hours. Mr. Sabatino mentioned that some of the prior discussion has eluded to the choice being taken away by this legislation, it is not, therefore this is not a necessary prerequisite. Two suggestions were made that the option of Family Court be inserted in the first RESOLVE clause or another RESOLVE clause be created, however Mr. Sabatino maintained that neither of these options are necessary.

Legis Prospect queried whether or not the legislation was all right the way it was, does it contradict any existing statute or local law or could it fly the way it is? Mr. Sabatino reported it can fly the way it is presently worded, however Mr. Kelley's point about narrowing down the protection order is a valid one if it is the desire of the Committee. However, he chose not to make policy. There are no violations, contradictions and is consistent with existing legislation.

Legis. Englebright wanted to know, the way the law is presently written, will it tend to emphasize the criminal proceeding as opposed to the family proceeding and that emphasis may destabilize the present access to a fair and reasonable expeditious resolution of many of the problems that have regularly been appearing. This concerned Legis. Engelbright and Legis. Mahoney's suggestion to add another RESOLVE clause that would include the option for Family Court and thought this

matter should be a part of a brainstorming session between Mr. Sabatino's office and the County Attorney's office, along with the sponsor and any other interested parties, such as members of this Committee. Then in two weeks time the distillation of thoughts should be reviewed.

At this time a motion to table this resolution was made by Legis. Heaney, seconded by Legis. Englebright – not voted upon, Legis. Mahoney announced the Committee was still in the discussion stage.

Legis. Allgrove then addressed Mr. Kelley as to whether this law is already on the books? Mr. Kelley answered affirmatively, however this is a strong statement of policy that is within the framework of the County Legislature's responsibilities. Mr. Sabatino advised this is not a local law, it is a resolution, however if adopted it is an indication that the Legislature does not believe that the current internal policy of the police department, with regard to enforcing these matters, is working. The Legislature is not denying that the policy exists, as the Commissioner has advised, it does exist. Therefore, the policy has to be made very clear and explicit, vigorous, criminal law enforcement in this arena and is not duplicate due to the fact there is no other legislation that says it.

Legis. Mahoney then invited Ms. Karen Russano, director of the Long Island Women's Coalition since 1976 has been working for victims of domestic violence of Suffolk County. Ms. Russano was concerned that she did not know of this legislation until yesterday when a news reporter called her and told her. Her natural reaction was that in view of the subject matter, the Committee would want input from her organization in that they deal with the victims every day.

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Ms. Russano and her organization support this legislation basically for the reason that a statement is being made and even though it may be the policy of the Police Department it is not being carried out.

Ms. Russano then stated she would relate some facts gathered in the last four months by the organization. It seems that 45% of the women that call or come to the Long Island Coalition had called the police first. Sixty per cent of the women said that after they had called the police in their time of need, the police had "done nothing." This also includes the fact that a complaint was not filed and the most common reason given by the police as a reason for their not being able to do anything was as follows: (1) The couple was not married. (2) The couple was married and that it was a family matter and not a matter for the police. (3) The police cannot ask him to leave his home or remove him from the home because it is his house too. (4) The abuser, when the police arrive had apparently left the scene and the policeman's reaction to that was that they could not chase him. Twenty-three per cent of the women calling the Coalition were told by the police that the woman had to have an order of protection in order for them to do anything. This information was given to single women despite the act that the only way an unmarried woman can secure protection is through the criminal court. An unmarried woman cannot go to the Family Court only married women can to get an order of protection. In order to petition the Family Court for an order of protection a complaint is needed. So when the police come they tell her they are unable to do anything, she will have to go to court and the victim cannot go into criminal court and petition until a complaint is filed by the Police Department, so where does that leave that victim, nowhere. Ten per cent of the women related that because this was the first time she called the police, they were unable to do anything, but the next time she

called they could. Police did file complaints on this last group – 10%. However, the police did tell these women that if and when they take an abuser down to the station to complete paper work when charges are pressed that the abuser would only be there only two hours and then released and probably would return home angrier than when he was taken away. Ms. Russano stated that this was intimidating the woman against taking any action. Seventy per cent of the women in place of any other type of action, including a complaint being written up, the police gave the woman a number to call, usually the Long Island Women's Coalition or SPLIT, dealing primarily with divorce cases.

Ms. Russano had with her 31 examples of violence, however she chose only to give a few. A woman reported to the police that a husband chased her car with his van in order to force her off the road. When she went to the Police Department she showed the scrape marks on the car and the policeman's reply was what do you want us to do chase him?

Another woman called the police, they came, she showed them a bruise on the side of her head that was given to her by her husband, the husband when the police arrived was wearing a hunting knife on his belt was still on the premises, the police did nothing. In this case it was determined that she had a concussion when she went to the hospital later that day.

One other case, the woman called the police, they came and stated there was nothing they could do in view of the fact that this was a family matter. Later that night she was hospitalized as a result of the injuries she had received from the battering incident.

Another case cited was a woman called the police, telling them she had a temporary order of protection as a result of past abusive

incidents, her husband had torn it up. The police said if she could not produce the temporary order of protection there is nothing they could do. There was no call made to verify whether she was telling the truth or not.

This is the case of a single woman, unmarried, the woman was physically assaulted by her partner in a public place, the police were called, and both the woman and witnesses told them of the abusive attack. The police filled out a complaint, but made no arrest because to the police he appeared to have calmed down. They told her if she was still afraid she shouldn't go home with him.

Another instance of a single woman cohabitating with a partner and after he had broken her nose along with dragging her across a room causing the muscles in her chest to be severely sprained and when the police came they said there was nothing they could do in view of the fact that was the first time they had been called.

Ms. Russano stated that with all due respect, the policy may exist, but it is not being carried out. This has been a known fact at the Coalition for seven years. The Coalition has attempted to work with local precincts, to work with the Commissioner's office. Four years ago the Coalition worked in the legal research department for the Commissioner's office.

Legis. D'Andre expressed the fact that the lady that testified previously stated she did not want her husband arrested because she would lose the income so if the policy were to be enforced more vigorously or this law is enacted and this man goes to jail then that lady would lose her income. Legis. Mahoney queried Ms. Russano as to what she would have done had this woman presented herself to the Coalition? Ms. Russano stated there are a

number of reasons women do not want men in jail, but this does not mean they don't want the battering to stop. There are orders of exclusion, which a judge can order and this takes care of the man being removed from the house. If the man violates that order then he would have to go to jail. Legis. Mahoney reminded Ms. Russano that that was not what the lady said, he violated the order of protection therefore what would prevent him from violating the order of exclusion and then being sent to jail. Ms. Russano doesn't think the decision as to whether a man goes to jail or not should be left up to the woman. Legis. Rizzo added that when someone commits a crime and is then sent to jail, the family does lose their income. The violator may go to jail once, but more than likely it would not happen again. Legis. D'Andre felt a violator should go to jail in order for the beating to stop. Ms. Russano reiterated it should not be up to the woman. Legis. D'Andre then stated it cannot be both was, you can't protect your standard of living and have the man sent to jail as it is now.

Legis. Prospect brought out that from the testimony given here today it is obvious that police officers are making up different rules, it is only the first time, therefore nothing can be done, what does that have to do with anything? The police officers are making up regulations as they go along, which are in violation of their departmental regulations, it is then doubly important that the Commissioner issue a clarification memorandum. It also makes it very important that the Legislature issue this strong policy statement in this area. The Commissioner agreed with all the suggestions, but wished that he had shield numbers and more pertinent information on these incidents so that remedial action could have been taken. Legis. D'Andre queried the Commissioner to find out whether these incidents are logged in and the Commissioner said they were. Legis. D'Andre then thought the precinct command should notify the Commissioner

of any of these incidents personally along with the disposition of the incident. In that way the Commissioner would have all the information, the parties involved, the officers involved, etc. and then the Commissioner would be able to act. The Commissioner said it would not work because someone would have to go back to the domestic dispute to see if it were handled correctly. There are approximately 2,000 calls a year. If the policy were reenforced and the word gets down to the end that this is what we want and if there are particular complaints they can be taken care of. The Commissioner said that if a particular incident is handled properly that's never heard. The Commissioner went on to say that responding to a domestic call is one of the most stressful tasks the police officer has to respond to and he is sure the Department members do the best possible. Comm. Treder said again he had every intention of enforcing this and also said he has been in office for a year and had to learn of this through the newspaper and had he been aware that the situation was not being handled properly he could have done something about it before this. Legis. Heaney went back to the suggestion given by Legis. D'Andre that the Commissioner handle this directly, it is impossible to handle it in this manner, when there are 2,000 calls annually. Legis. Heaney then said there are many other things the police have to take care of. Legis. Rizzo then asked again how many arrests were made? Legis. D'Andre still insisted that calls of this nature get red lettered in order to let the Commissioner know exactly what is happening in this area. This will mean that the policemen will know that the Commissioner is personally involved which will result in a change of attitude of the policemen in view of the fact that their actions will be scrutinized. Legis. Heaney advised that this would be too much of a burden for one person and there are other qualified people in the department to aid the Commissioner. Comm. Treder offered to assign a supervisor, a sergeant, to respond to these calls along

with a policeman. However, on certain occasions this will not be practical if other things are happening. Legis. D'Andre foresees a change in the handling of these calls if the Commissioner indicates strongly that he wants this handled properly. Legis. Rizzo indicated he would not change the language in the resolution.

Legis. Allgrove questioned Ms. Russano as to why she had not appeared before the Public Safety Committee or the Human Services Committee of the Legislature prior to now. Ms. Russano stated she had spoken with the Legislators before and in fact spoken with everyone they could have relative this problem.

Legis. Rizzo reported he always thought nothing could be done about this problem until he read that Nassau County had addressed the problem. Legis. Rizzo also learned after some investigation that this problem is being addressed in many communities throughout the United States. It is a conservative estimate that 1.8 million women are being abused by their husbands each year. Legis. Caracappa indicated that on one of the popular TV shows it was indicated that policemen have been trained not to get involved in domestic violence. Comm. Treder advised there is a difference in not getting involved in a family domestic problem except when there is an assault involved. If a policeman were to go where there is a violent argument, there is no way a policeman would be able to solve that. Legis. Heaney queried what would happen if the police try to arrest a husband and the wife says no. Legis. Rizzo advised that the wife would have to make the complaint.

Ms. Mary Fleming a law school graduate that has worked extensively with the subject of family violence and she strongly urged the Committee to pass this legislation. If not this particular

resolution, one similar. It is a serious problem throughout the nation and it contributes to child abuse and if the police officer is backed up with a strong policy it will allow him to do more. Furthermore, Ms. Fleming suggested that the Suffolk County Police Department follow the example of many departments throughout the U.S. and offer additional training in the academy and elsewhere on how to deal with this very difficult problem. These programs have saved policemen's lives and with this training he would have a better idea of what to do. Legis. Mahoney commented that very often when a policeman responds to a family dispute he ends up with two enemies instead of one. Legis. Heaney mentioned that everyone in the room is definitely for the resolution; however there is a question as to whether the bill needs some fine tuning. The Commissioner is for the resolution. Legis. Rizzo again stated he did not want to change the language.

The motion to table for two weeks was again made by Legis. Heaney, seconded by Legis. Englebright-Vote: 2/5/0/0. (Legis. Heaney and Englebright approved. Legis. Mahoney, Allgrove, Caracappa, D'Andre and Prospect opposed.) Therefore this motion failed.

A motion to approve was made by Legis. D'Andre, seconded by Legis. Carracappa-Vote: 7/0/0/0.

Legis. Devine requested that she be mentioned as a co-sponsor of the resolution as co-sponsors.

Ms. Jane Corrzrino came forth and stated that all of the legislators present had heard her presentation in another Committee and thanked them for their courtesy, as all the legislators had to leave to attend another Committee meeting.

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12:40 p.m. - A motion to adjourn was made by Legis. Prospect, seconded by Legis. Englebright.

Legis. Patrick J. Mahoney, Chairman
Public Safety Committee

APPENDIX E — SUFFOLK COUNTY RESOLUTION NO. 1950-84

NO. 1950-84 RESOLUTION NO. 940

DATE: 10/9/84

TITLE:

Offered by Rizzo

Seconded by Bachety

Additional Sponsors: All but Mahoney

Dist. No.		Yes
1	Gregory J. Blass	X
3	John Foley	X
4	Rose Caracappa	X
5	Steven C. Englebright	X
6	Donald C. Allgrove	X
7	Michael M. D'Andre	X
8	James Morgo	X
9	Joseph Rizzo	X
10	Philip C. Nolan	X

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11	Patrick A. Mahoney	X
12	Sondra M. Bachety	X
13		
15	Wayne Prospect	X
16	Patrick J. Heaney	X
17	Jane R. Devine	X
18	Robert L. LaBua	X
2	John Rosso	X
14	Louis T. Howard	X
	TOTAL	17

RESOLUTION DECLARED:

ADOPTED X
By unanimous Vote

NOT ADOPTED
by x Voice vote

s/ William H. Rogers
Clerk to the Legislature

Appendix E

Intro. Res. No. 1950-84 Laid on Table 9/25/84
Introduced by Legislators Rizzo, Blass, Rosso, Foley, Caracappa, Englebright, Allgrove, D'Andre, Morgo, Rizzo, Nolan, Bachety, Howard, Prospect, Heaney, Devine, LaBua

RESOLUTION NO. 940-1984, TO REQUIRE THE SUFFOLK COUNTY POLICE TO PRESS FOR CRIMINAL ENFORCEMENT FOR FAMILY ASSAULT CASES

WHEREAS, incidents of domestic violence continue to increase at alarming rates; and

WHEREAS, a 1983 study by the National Institute for Justice has found that repeat offenses dropped to 14%, as compared with 35%, when arrests are made for family assaults; and

WHEREAS, intra-family violence constitutes a serious threat to the health and well-being of many citizens in Suffolk County; now, therefore, be it

RESOLVED, that the Suffolk County Commissioner of Police is hereby authorized, empowered, and directed to press criminal enforcement in cases of family violence; and be it further

RESOLVED, that the Suffolk County Police Commissioner is hereby authorized, empowered, and directed to establish a twenty-four (24) hour record service whereby police officers will be able to confirm the existence of court orders protecting potential victims of family abuse from a spouse; and be it further

RESOLVED, that the Suffolk County Police Commissioner

is hereby authorized, empowered, and directed to effectuate immediate arrest when such portion of such an order is violated; and be it further

RESOLVED, that the Suffolk County Police Commissioner is hereby authorized, empowered, and directed to effectuate an arrest if there is evidence of a criminal offense by one member of a family against another member.

DATED: October 9, 1984

APPROVED BY:

s/ Peter Cohalan
County Executive of Suffolk County

Date of Approval: 10/12/84

APPENDIX F — SUFFOLK COUNTY POLICE COMMISSIONER ORDER NO. 84-57

POLICE DEPARTMENT, COUNTY OF SUFFOLK, N.Y.

x Special

ORDER NUMBER 84-57

DATE: 10-5-84

AUTHORITY: Police Commissioner

SIGNATURE: Dewitt C. Treder

DOMESTIC DISPUTES

A 1983 study conducted by the National Institute for Justice has found that repeat offenses of family assaults are substantially reduced when an arrest for these offenses is made. In accordance with these findings and to further maintain this Department's policy of assisting victims of family abuse, it is now necessary to reaffirm the procedures that are to be followed in handling incidents of domestic disputes and domestic violence. All Members of the Force will reacquaint themselves with the following Chapters and Sections of the Rules and Procedures:

Chapter 9/2.14(D)4 — "Incident" (Domestic Violence)

Chapter 18/10.0—"Family Complaints"

Chapter 18/11.0 — "Orders of Protection"

Furthermore, anytime a Police Officer handles a domestic dispute and there is evidence of a family offense which is either a

felony or misdemeanor being committed by one member of a family against another, a civilian or summary arrest will be made. However, if evidence of such a family offense does exist and the victim will not aid in the prosecution, a supervisor will be called to the scene. The outcome of the situation will then be reported in the body of the Field Report and the full details reported in a Supplementary Report by the supervisor.

In cases where a domestic dispute results in a family offense that is a violation, i.e. Disorderly Conduct, and was not committed in the presence of a Police Officer, only a civilian arrest can be made. In all cases, where a family offense, either violation or crime has been committed and the perpetrator is not at the scene, the information will be relayed via Field Report to the appropriate investigating command for follow-up.

To ensure that the Rules and Procedures and Department Policy are being adhered to it will be the responsibility of the Precinct Administrative Captain to designate a Platoon Commander to contact victims of domestic violence cases where no arrests have been made) handled within that Precinct. The purpose of these contacts will be to determine if the incidents were handled in a proper and professional manner. Also, on a random basis, the Platoon Commander will contact complainants of domestic disputes to ascertain if they too are being handled properly. The Platoon Commander will then report via Internal Correspondence his findings to the Precinct Administrative Captain.

On a monthly basis, the Precinct Administrative Captain will forward a summary report to the Office of the Chief of District containing the following:

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1. A list, by Central Complaint Number, of all domestic disputes and domestic violence incidents handled during the month.

2. A list of arrests made and their nature.

3. A list of contacts made to victims of domestic violence (where no arrests were made) and the outcome of these interviews.

4. A list of random contacts made to complainants involved in domestic disputes and the outcome of these interviews.

The Office of the Chief of District will prepare a summary report containing same information for the Chief Inspector and Police Commissioner. The Management Services Bureau will be the repository for these reports.

END

APPENDIX G — SUFFOLK COUNTY POLICE COMMISSIONER ORDER NO. 85-20

POLICE DEPARTMENT, COUNTY OF SUFFOLK, N.Y.

ORDER NUMBER 85-20

DATE: 9/19/85

AUTHORITY: COMMISSIONER

SIGNATURE: Dewitt C. Treder

DISTRIBUTION: ALL COMMANDS

ORDERS OF PROTECTION

In an effort to clarify and distinguish the proper procedures to be utilized when affecting an arrest for a violation of Family Court and Criminal Court Order of Protection, effective immediately, Chapter 16, Section 11.0 of the Rules and Procedures has been amended as follows:

Title	16/11.0 Orders of Protection
Family Court and Criminal Court Orders of Protection	16/11.1 The presentation of a Family or Criminal Court Order of Protection to a Member of the Force by the petitioner constitutes authority to take the person named therein, (the respondent) into custody for an alleged violation of the terms stipulated thereon, the petitioner being the complainant. If probable cause exists that the respondent violated the terms

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of the Order of Protection, an arrest will be made. There will be no attempts to reconcile or mediate the situation.

Arrest

16/11.1A Any time a respondent is taken into custody for a violation of an Order of Protection, he will be charged with that violation. (i.e. violation Order of Protection, Family Court or violation Order of Protection, Criminal Court.) Upon his taking of the respondent into custody, the arresting officer has the petitioner sign a civilian arrest form. (He takes the Order of Protection and makes a photostat copy of the same, submitting the photostat copy to the Court wherein the respondent is taken for disposition or for the purpose of posting bail.) The petitioner's copy and a copy of the civilian arrest form are returned to the petitioner. On the arrest worksheet, included in the descriptive details of offense by the officer should be:

1. How, when and where the respondent violated the Order of Protection. Give details.

2. The charge and statute area should appear as follows:

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a. When charging for violation of Family Court Order of Protection "Section" should read VOPF, "Statute" should read FCA.

b. When charging for violation of Criminal Court Order of Protection "Section" should read VOPC, "Statute" should read CPL.

3. ***Neither Criminal Court nor Family Court Orders of Protection informations will be signed.*** They are forwarded to the Courts for informational purposes only to ensure that the Courts are given the details of the violation.

4. Do not send the prosecution worksheet to Court, it may be discarded.

5. The required Court papers are, but not limited to:

a. Copy of Civilian Arrest Report

b. Copy of Arrest Worksheet

c. Copy of Order of Protection

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d. (3) Court Informations, unsigned

e. (2) Arrest Records; include even though defendant has no record and indicate "No Record", if that is the case.

f. Court Disposition Report.

Respondent Gone Prior to Arrival

16/11.1B In a situation where the respondent is not at the scene, (although a respondent may be taken into custody at any place not necessarily at the scene of the alleged violation) the police officer will advise the petitioner of the following options, depending on which Order of Protection applies:

1. Family Court Order of Protection; the petitioner can respond to the Probation Intake Unit in Hauppauge and file a petition, violation of Order of Protection.

2. Criminal Court Order of Protection; the petitioner can respond to the precinct Crime Control Section and file a complaint in accordance with existing laws and procedures.

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Expiration Time

16/11.1C The period of time in which Orders of Protection are in effect is calculated from the date of issuance of the Order of Protection and/or the time period as indicated on the order. This period, in months, is noted on the Order of Protection or in some instances the phrase "until further order of the Court" may be noted. When this quoted phrase is indicated on the order, it is in effect indefinitely until voided by the Court.

Bail

16/11.1D A respondent taken into custody for an alleged violation of an Order of Protection may be admitted to bail by the Family Court or any Criminal Court but *never* bailed by police personnel.

Arraignment
Family Court

16/11.1E When a respondent is taken into custody and the Family Court is in session, the petitioner is directed to respond immediately to Family Court. If the respondent will not be arraigned that day at Family Court and Family Court is in session the next day, the petitioner is directed to appear in Family Court at 0900 hours the following day.

Arraignment
District Court

16/11.1F When a respondent is taken into custody any time Family Court is

not in session and Family Court is not in session the next day, the respondent will be arraigned in First District Court. The petitioner is directed to appear in Family Court on the next business day at 0900 hours. Violators of Criminal Court Orders of Protection will always be arraigned by the District Court. When a respondent is taken into custody on a Criminal Court Order of Protection and First District Court is in session, the petitioner is directed to respond immediately to First District Court. If First District Court is not in session, the petitioner is directed to appear in First District Court at 0900 hours the following day.

Precinct Files

16/11.2 A Precinct file will be set up for copies of Orders of Protection received by the Precincts from the Family and/or District Courts. All Orders of Protections will be retained at the Precinct where the petitioner resides. The Administrative Office will maintain a file in a location that is accessible 24 hours a day. If there is any question as to the validity of an Order of Protection, the handling officer will contact the precinct to have the file copy checked. The file will be in alphabetical order according

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to petitioner's last name. It will be the responsibility of the Administrative office to periodically check files and remove and destroy Orders of Protection that have expired.

INDEX: AMEND	Chapter	16/11.1 16/11.1A 16/11.1B 16/11.1C 16/11.1F 16/11.2
DELETE		16/11.2 Criminal Court Orders of Protection through
		16/11.12 Possession of Order
CHANGE		16/11.3 to 16/11.2

APPENDIX H — SUFFOLK COUNTY POLICE COMMISSIONER ORDER NO. 88-9

POLICE DEPARTMENT, COUNTY OF SUFFOLK, N.Y.

ORDER NUMBER 88-9

DATE: 3/10/88

AUTHORITY: First Deputy Commissioner

SIGNATURE: illegible

DISTRIBUTION: ALL COMMANDS

Domestic Disputes

A 1983 study conducted by the National Institute for Justice has found that repeat offenses of family assaults are substantially reduced when arrests for these offenses are made.

Executive Order 1a-1988 fully supports these findings and directs that a pro-arrest policy be implemented when handling incidents of family violence or abuse. Therefore, effective immediately, Chapter 16, Section 10, reference Family Offenses and Domestic Violence, is amended as follows:

Title	10.1 Family Complaints Domestic Disputes
Procedure	10.1 New York State Law requires that a member of the force provide to the victim or complainant of a family offense, a *written* notice that there is a choice of forum between Family and Criminal

Court; an explanation of these court procedures; and a list of agencies and shelters where the victim may secure help. The "Family Offense Assistance and Court Procedures" notice complies with this mandate and is written in English and Spanish. This notice will be given to all victims of family offenses and documented by the reporting officer on the incident Field Report. Issuance of this notice does not relieve a member of the force from the responsibility of verbally informing the victim or complainant of the choice of court and the purpose of each court. A proceeding brought in Family Court will be for the purpose of attempting to stop the violence and obtain protection, while an action commenced in Criminal Court will be for the purpose of punishing the offender. The choice is made by the victim, not the member of the Force. The choice once made will bar simultaneous or subsequent proceeding in the alternate forum, except that the complainant may request a change of courts within seventy-two (72) hours from the time a proceeding began in either Family Court or Criminal Court, unless the case has been decided by the Court.

Family Complaints/ Domestic Disputes General Guidelines

10.2 All members of the Force handling domestic disputes will be guided by the following mandates;

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A. Where a Police Officer at the scene of a domestic disturbance lacks reasonable cause to make an arrest and where no civilian arrest is being made, the officer shall remain at the scene until the officer is satisfied that any immediate danger of violence has passed and the officer has exhausted all appropriate options to protect and assist the victim or any potential victim.

B. Whenever a Police Officer responds to a report of a domestic disturbance, whether an arrest is made or not, the officer shall file a written report detailing the incident. When an arrest is made in reference to domestic violence, a copy of the appropriate report (Field Report if arrest is made by responding officer, or Supplementary Report when arrest is made by officer responsible for follow-up investigation) will be forwarded by Command administrative personnel, to the Commissioner of Social Services who will determine the appropriate assistance agency.

C. Whenever a Police Officer responds to a report of a domestic disturbance, whether an arrest is made or not, the officer shall obtain the name, date of birth and address of any children less than eighteen (18) years of age who are

the issue of the victim or suspect whether they reside on the premises or not. Where there is reasonable cause to suspect that any child mentioned in said report may be the victim of child abuse, neglect or any other maltreatment, a copy of the report shall be immediately forwarded to Child Protective Services and immediate reference made by the Police Officer to the State Central Register.

Family Offense

10.3 Family offenses, as defined in the Family Court Act and Criminal Procedure Law, are acts which would constitute disorderly conduct (including disorderly conduct not in a public place), harassment, menacing, reckless endangerment, assault in the second degree, assault in the third degree, or an attempted assault between spouses or between parent and child or between members of the same family or household. For purposes of this section "Members of the same family or household" means:

A. Persons related by consanguinity (blood relationship), or affinity (marital relationship) to the third degree, and

B. Persons married to one another.

C. Persons formerly married to one another.

D. Persons having a child in common regardless of whether they have been married or lived together at any time.

Household — Expanded Definition

10.4 Offenses committed by people of the following relationship shall be covered by this Rules and Procedure Section as to when and how arrests are made but are not family offenses and therefore can only be adjudicated at Criminal Court:

A. Persons who are not legally married, but who live together in a family relationship.

B. Persons who are not legally married, but formally lived together in a family relationship.

Scene of a Domestic Dispute Where an Offense has Occurred

10.5 At the scene of a domestic dispute where an offense has occurred, before processing with any action concerning a family offense, the complainant must be advised of the court options open to them and the right to make a civilian arrest. In all cases where a physical arrest is made, the defendant will be taken to District Court. If the complainant chooses the Family Court forum the District Court must be advised by the complainant within seventy two (72) hours. In situations where the offense occurred between members of a household, as per

department expanded definitions, as outlined in Section 10.4 of this chapter, are not family offenses as per New York Law and the only court option available is criminal court.

Arrest

A. A Police Officer that responds to a domestic dispute incident and finds there is evidence that a family offense, or offense between members of a household expanded definition, as outlined in Section 10.4 of this chapter, and is a felony, the officer shall not attempt to reconcile the parties or mediate and shall arrest the offender, even if the victim requests otherwise.

B. A Police Officer that responds to a domestic dispute incident and finds there is evidence that a family offense or offense between members of a household expanded definition, as outlined in Section 10.4 of this chapter, and is a misdemeanor, the officer shall not attempt to reconcile the parties or mediate and shall arrest the offender, unless the victim requests otherwise.

C. A Police Officer that responds to a domestic dispute incident where a family offense or offense between members of a household expanded definition, as outlined in Section 10.4 of this chapter, and is a violation, e.g.,

disorderly conduct, harassment, and has been committed in the officer's presence, the officer shall not attempt to reconcile the parties or mediate and shall arrest the offender, unless the complainant requests otherwise or unless extraordinary circumstances are present. When the violation has been committed not in the Officer's presence, he shall inform the victim, out of the presence of the suspect whenever possible, of the victim's right to make a civilian arrest pursuant to Section 140.30 of the Criminal Procedure Law. If the victim requests a civilian arrest, the Officer shall effect and process the arrest.

D. When an arrest is made, whether a summary arrest due to necessity or a civilian arrest, regardless of the forum chosen, Criminal or Family Court, the defendant will be charged criminally in Criminal Court. Once an arrest is made, the complainant has seventy-two (72) hours from the filing of the complaint with the court to change courts. Offenses between members of a household expanded definition as outlined in Section 10.4 of this chapter, are not family offenses as per new York State Law and the only court option available is Criminal Court. In these cases all

appropriate court paperwork will be prepared. Note Section 10.7 of this Chapter for important instructions on preparation of court informations.

E. When an officer makes no arrest in response to a complaint of a family offense, or offense between members of a household expanded definition as per Section 10.4 of this chapter, prior to completion of the tour of duty, the officer shall prepare a detailed written report setting forth the reasons why no arrest was made. This report shall be filed with and reviewed by the officer's commanding officer. Incidents of noncompliance with this Order shall be reported to the Police Commissioner by the member's Commanding Officer, for any appropriate disciplinary action.

F. The officer may not use any of the following reasons for failing to make an arrest.

1. That the suspect lives on the premises with the victim.

2. That there may be a financial consequence caused by the arrest.

3. That the suspect has left the premises or is willing to do so.

4. That the suspect and victim are married or had a prior or existing cohabiting relationship.

5. That the victim has made prior calls or is a chronic caller.

6. That the suspect gives verbal assurance that no harm shall occur to the victim.

7. That the alleged injury is minor or not visible.

8. That the officer feels that the victim may not cooperate in subsequent proceedings.

9. That prosecution or conviction may not occur even though there exists reasonable cause to arrest.

Precinct Crime Control Reporting

10.6 Precinct Crime Control Officer when preparing a Criminal Court Information concerning a family offense, at the request of a complainant, will advise the complainant of the court options available. The "Details Section" of the Field Report will state that the complainant was so advised of the court options available in matters of family offenses. The complainant will place his signature under the statement certifying this.

Appendix H

Accusatory Instrument (Court Information) Preparation

10.7 The Chief Administrative Judge of the courts in this State has mandated that accusatory instruments filed for any offense committed by a defendant against one of the below listed persons shall be marked as indicated in subdivision A of this section, or under certain circumstances, notification made at the time the accusatory instrument is submitted, as in dictated in subdivision B of this Section. Such persons are:

— a person related to defendant by consanguinity or affinity, whether or not such person resides with defendant;

— a person to whom defendant was or is married, whether or not such person resides with defendant;

— a person with whom defendant has a child in common, whether or not such person was or is married to defendant or resides with defendant;

— a person with whom defendant resides.

A. An accusatory instrument that charges a defendant in a criminal proceeding with any offense where the relationship between the defendant and victim is as listed above will have a description of the relationship between

the defendant and the victim indicated on the upper right hand corner of the accusatory instrument in the following form:

FO

Defendant _____
relationship to alleged victim

Alleged victim: _____
relationship to defendant

B. Where a protection of the identity of a victim of an offense is required by law or otherwise is deemed appropriate, and where placement of the designation or relationship on the accusatory instrument would tend to identify the victim, the criminal justice agency may file instead a separate statement annexed to the accusatory instrument, alerting the court of the defendant's relationship to the victim. Such statement shall not be made available to the public.

Definition Domestic Violence

10.8 Domestic violence occurs anytime an offense of a violent nature or a sex offense is attempted or committed against a family member who is either husband, wife, relative or common-law spouse. When a member of the Department handles a call of this nature, the word "Domestic" will

be listed in the incident box on the Field Report after the specific incident (e.g., Assault 3rd 120.00 P.L. — Domestic).

INDEX: Domestic Disputes
Family Complaints
Family Offenses

END

APPENDIX I — PROGRESS REPORT DATED OCTOBER 20, 1991 FROM THE OFFICE OF COUNTY EXECUTIVE PATRICK G. HALPIN

PROGRESS REPORT

A Comprehensive Anti-Domestic Violence Program for Suffolk County

October 20, 1991
Office of County Executive
Patrick G. Halpin

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"I remember years ago working with battered women. Our advice to them was when they needed the police, don't call and say "My husband is beating me". Call and say "There is an intruder in my house". That was standard advice. If it was domestic violence, the police just wouldn't come or they would come late."

Pamela Johnston
Executive Director, Victims Information Bureau

"I don't think it's just the pro-arrest policy that's led to a better understanding of domestic violence. It's the film, the booklets that we're able to give to people — it's everything taken together. It's not the pro-arrest policy standing isolated. It's how the county has coordinated the pro-arrest policy with the other services it provides."

Diana Weintraub
Executive Director, The Retreat

Appendix I

On February 5, 1988, Executive Order la was issued by Suffolk County Executive Patrick Halpin. In essence, the order directed the Suffolk County Police Department to "implement a pro-arrest policy in incidents of family violence and abuse." It stated that "our responsibility is to protect the victims. We will be guided by the nature of the violent or abusive act and not the relationship between the victim and the abuser."

The issuance of the executive order was based in part on the findings of the United States Attorney General's Task Force on Family Violence, which reported in 1984 that arrest was the preferred response in instances of family violence. Virtually all other experts on the issue, both within law enforcement and in other fields, had determined that arrest was the preferred response from law enforcement personnel.

Another factor which led to the issuance of the executive order and the genesis of Suffolk's comprehensive anti-domestic violence efforts was the involvement of advocates for battered women. These advocates made it clear to the administration from the beginning that there were startling and stark needs which were not being met.

Before the policy was drafted, advocates were consulted and their ideas were solicited to assure that the administration would indeed realize its objective of assisting and empowering victims of family violence.

The degree to which advocates informed the development of the pro-arrest policy is evident in light of the change in the policy from its first form to the second, final and ultimately implemented form: the first draft stated that the police would make an arrest in all cases where there was probable cause to

believe a felony or misdemeanor had occurred. Many advocates were concerned that this would lead to further disempowerment of victims. It was suggested that the policy state a presumption that an arrest would be made in misdemeanor cases, unless the victim specifically requested otherwise. This change was consistent with the aim of implementing a *pro*-arrest policy, rather than a *mandatory* arrest policy.

The administration's reliance upon and welcoming of the insight, experience and perspective of victim advocates is an essential reason for the success of Suffolk's anti-domestic violence program. As stated by Pamela Johnston, Executive Director of the Victims Information Bureau of Suffolk:

> "When the pro-arrest policy was first put into effect, there was a big meeting in the County Executive's office. Joanne Sanders (Executive Director of the Long Island Women's Coalition) and I were invited. Everybody else in the room was top brass. I couldn't believe that this was happening. It was just unprecedented in my experience. I couldn't believe that a police commissioner would be concerned or involved and that all those people would be talking. They asked us what we thought and they listened to us."

Neither the theoretical basis for a different police response to incidents of domestic violence nor the practical need articulated by advocates for battered women were new developments. What was new, and what was the impetus for the radical changes in Suffolk County, was the commitment to utilize the vast resources of county government to help break the cycle of family violence.

With this third critical element now in place, the pro-arrest policy was drafted and issued. And thus began Suffolk's comprehensive anti-domestic violence program.

Now, nearly four years after the pro-arrest policy was issued and the comprehensive anti-domestic violence program began we need to ask: Is it working? Is the intended objective being attained?

There is anecdotal evidence that the pro-arrest policy is working; that the shift in policy regarding domestic violence is making Suffolk safer for victims.

According to Carol Zara, domestic violence survivor and advocate for battered women:

> "The pro-arrest policy has made fantastic changes in Suffolk County. Had the policy been in effect [when I was in an abusive relationship ten years ago], I really believe — especially in my case — the abuse would have completely halted because he feared the police and being arrested."

According to Sergeant Donna Engel of the Suffolk County Police Department Domestic Violence Unit:

> "We've had contact with some victims who were involved with the police prior to pro-arrest and a lot of them said that the attitudes of the officers have changed. The system may still be a little difficult to negotiate [but] the attitudes of the police officers, court

> personnel and the district attorney have really improved and [victims] feel that they are not knocking their heads against a wall when they reach out — there is somebody that cares."

One difficulty in measuring the impact of Suffolk's comprehensive anti-domestic violence program is that there is virtually no data regarding pre pro-arrest days. All that is really known is that there were 127 arrests for domestic violence in all of 1987. Traditional law enforcement data collection does not indicate the relationship between victim and perpetrator. Thus, developing a data base was one of the top priorities of the police department. Throughout 1988, the department developed a system whereby data are collected, and thus able to be analyzed, with regard to domestic violence situations.

While the commitment of the administration to seek to break the cycle of family violence and to increase the safety of women and children was sudden and total, and the policy articulation unequivocal, positive change is incremental. It was expected that in Suffolk — as has been the case in other municipalities implementing a pro-arrest policy — there would be an immediate substantial increase in the number of arrests. It was further anticipated that the sharp increase in reported incidents and arrests would be followed by a gradual decrease leading to a leveling off of activity.

The increase in reported activity is more a reflection of heightened awareness of domestic violence than it is an indication of an actual increase in domestic violence incidents. The pro-arrest policy began to make it safe for victims to reach out for help; it did not increase the number of victims. According to Sergeant Donna Engel:

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> "The number of reports have gone up since the implementation of the pro-arrest policy. That's not to say that domestic violence has increased. But more people are aware that there are support agencies to help them out and that domestic violence isn't going to be tolerated. . . . There are options."

One of the primary objectives of the pro-arrest policy was to encourage victims to reach out for help early in the relationship. The cycle of domestic violence is one in which the abuse becomes increasingly frequent and more severe. Thus, if victims reach out before the violence reaches highly severe levels, their safety is increased.

The following charts show one of the most significant trends over the past four years, a trend which indicates that victims are reaching out for help earlier in the cycle of domestic violence. Since 1988, there has been a 30 percent decrease in assaults and attempted assaults.

Percentage of Incidents by Severity*

	Total Incidents	Other Offenses	Non-Criminal	Assault 1-2-3 Attempted Assault	Menacing; Dis. Con.; Aggr.Harr.; Phys/Verbal Harr.; Reck. Endangerment
1988 (March-Dec.)	99.5	8.3	40.1	8.3	42.8
1989	99.1	7.4	35.2	6.9	49.6
1990	99.5	8.0	40.4	6.8	44.3
1991 (Jan-Aug.)	99.8	8.2	42.6	5.6	43.4

In 1988, assaults and attempted assaults accounted for 8.3% of all incidents; in 1991, they accounted for 5.6%.

* All data obtained from the Suffolk County Police Department Domestic Violence Unit.

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Administrative Changes

> "Things have changed dramatically since the pro-arrest policy. Before, we did not have a working relationship with the police department. We were more adversaries than working together to help victims. They wouldn't even hand out brochures to the clients. There was no communication. They did their job and we did ours."
>
> Joanne Sanders

A number of administrative changes took place in order to facilitate the development and implementation of Suffolk's antidomestic violence project. Chief among them was the adoption of a pro-arrest policy by the Suffolk County Police Department.

Obviously, the policy was implemented rigorously: the number of arrests for family violence offenses increased from 127 recorded in 1987, to 1,361 in 1988, to 3,765 in 1989, then began to decrease to 2,857 in 1990, and to 1,402 in the first eight months in 1991. It-is projected that there will be about 1,900 arrests in all of 1991.

More telling data indicates that the police are enforcing the policy in two significant ways: as the chart below shows, follow-up arrests where the police actively seek out the alleged perpetrator and arrests for violations of orders of protection have increased as a percentage of all arrests.

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	% of all incidents leading to arrest	% of all arrests which are "follow-up"	% of all arrests which are for VOP only
1988	15.6	1.4	13.3
1989	19	21.7	16.3
1990	14	18.8	19
1991 (thru Aug)	11	14.4	20.7

The percentage of arrests effected due to police "follow-up" has increased from 1.4% in 1988 to 14.4% in 1991.

The percentage of arrests for violations of orders of protection has increased from 13.3% in 1988 to 20.7% in 1991.

The percentage of incidents leading to arrests has decreased from 15.6% in 1988 to 11% in 1991.

No new policy can be fully effective without appropriate training of those charged with implementing it. In any police department, this means that the police commissioner must be supportive of the policy, the assumptions underlying it, and the potential efficacy if properly implemented. It must serve the public well, and assure, to the highest degree possible, the safety of police officers.

At the time that Executive Order la was issued, the Suffolk County Executive was engaged in a nationwide search for a new police commissioner. Daniel Guido was selected to be the new police commissioner because of his high degree of law

enforcement professionalism and experience. He was also supportive of the County Executive's pro-arrest policy and he set to work immediately to assure proper implementation.

According to Sergeant Engel:

> "Prior to the pro-arrest policy, this department did a lot of mediation, like other police departments throughout the United States. Crisis intervention, separation of the parties—arrests weren't really encouraged . . . One of the most significant factors [with regard to the pro-arrest policy] is the attitudes of the police officers. They have undergone sensitivity training. Now they are more sensitive to the issue of domestic violence and the needs of the victims. This is a big change."

Increased sensitivity of police officers to the dynamics of family violence and to the needs of victims is reflected in the following chart which shows fewer victims are calling the police more than once. First cries for help are heard and answered.

ANSWERING THE FIRST CALL FOR HELP

Number of Times Police Were Called by the Same Female Victims

	Total Calls	*Number of Times Police Were Called* 1	2	3	4	5+
1989	15,233	12,900	1,458	492	206	177
1990	15,442	13,234	1,417	430	179	182
1991 (Jan-Aug)	9,792	8,535	863	246	74	74
1991 (Annual Projected)	12,925	11,468	958	289	97	113

ANSWERING THE FIRST CALL FOR HELP
Percentage of Female Victims Calling The Police More Than Once

	Total	*Number of Times Police Were Called* 1	2	3	4	5+
1989	100	84.7	9.6	3.2	1.4	1.1
1990	100	85.7	9.2	2.8	1.2	1.2
1991 (Jan-Aug)	100	87.2	8.8	2.5	.75	.75
1991 (Annual Projected)	100	88.7	7.4	2.2	.75	.95

There has been a four point increase in the percentage of women who needed to call the police just once. Whereas 15.3% of female victims in 1989 called the police more than once, only 11.3% will have done so in 1991.

It is not just the percentage of repeat calls which has diminished: nearly 1,500 fewer women will call the police twice in 1991 than was the case in 1989.

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The police and advocates are seeing the impact of having victims call earlier. According to Sergeant Engel:

> "We're getting a lot of victims calling for pushing and shoving, which is a good sign. It shows that they are calling a little earlier — before the abuse gets extremely serious."

Carol Zara from the Long Island Women's Coalition states:

> "Now that women know that the pro-arrest policy is in effect, we're getting calls before the women are really beaten up. The calls are coming earlier."

A Domestic Violence Unit was established by the Police Commissioner within the Chief of Patrol's office. This Unit is primarily responsible for the keeping of all relevant domestic violence data. Prior to the issuance of Executive Order la, the police department did not keep data in a manner which would enable an analysis of the prevalence and/or severity of domestic violence in Suffolk. Now, however, a system has been developed whereby data is captured and categorized with regard to the relationship of victim to perpetrator.

In addition to its data collection and analysis functions, the Domestic Violence Unit is a liaison with domestic violence advocates and service providers. It is also the place where victims can call. According to Police Officer Adam Gromacki:

> "I've had a few calls where the victims that were referred here were surprised at some of the things we did for them."

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Copies of all domestic violence incident report forms are submitted to the Domestic Violence Unit in the police department; copies of all report forms are also faxed to the Victims Information Bureau of Suffolk which then contacts the victim within twenty-four hours to offer assistance and support. Furthermore, a Domestic Violence Unit was established in the Department of Social Services. The police send copies of all domestic violence incident reports to the Department of Social Services where each report is checked against DSS records to determine if there is a Child Protective Services or Adult Protective Services case pending with regard to any family members. If so, the caseworker is notified about the incident so that he or she can proceed with the investigation having all relevant information. This procedure supplements, and does not replace, the activity of the police as mandated CPS reporters.

Overseeing all administrative, educational, programmatic and legal initiatives is the Suffolk County Executive's Task Force on Family Violence. It is comprised of more than 45 members and includes representatives from law enforcement agencies, the judiciary, social service agencies, victim service agencies, the educational and academic communities, former victims, and members of the community at large. The Task Force was empaneled in early 1988 in order to serve as a catalyst, developer, coordinator, evaluator and advocate in Suffolk with regard to all aspects of family violence. It is chaired by Suffolk Social Services Commissioner Ruth Brandwein.

Public Education ana Professional Training

The only way in which the pro-arrest policy and Suffolk's anti-domestic violence project would succeed was if there was a concerted effort to educate the public about the issue and options

available to those caught in the cycle of family violence, and to train professionals who deal with victims and perpetrators. Such a concerted effort was undertaken in Suffolk.

To begin, the curriculum at the police academy was altered to include training and information on the new policy and to offer cadets enhanced education on the dynamics of family violence.

In addition to standard communication procedures employed whenever a policy is changed, in-service training was provided for current police officers who viewed a videotape regarding family violence and were able to ask questions of their superior officers.

The highest level of police brass from Suffolk County, as well as from village, town and neighboring police departments, were invited to a day-long seminar held in the spring of 1988. This seminar consisted of an overview of the historical, legal and social forces which sanction violence against women in families; a panel discussion by formerly abused women and former abusers; and a panel from the perspective of the courts with judges from the family and criminal courts.

Since the Suffolk County Police Department does not cover the five eastern towns in the county or those villages with their own police forces, the police commissioner and the county executive held several meetings to brief police chiefs from town and village police departments. In addition, an East End Police Conference was also held.

According to Susan Brown, Chair of the East End Consortium on Family Violence:

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> "Before the pro-arrest policy in Suffolk County, there was no consistent policy regarding domestic violence. Once the policy went into effect, it forced the East End police departments to address the issue of their response. Public awareness increased and the East End police received more inquiry calls."

A number of conferences have been developed and sponsored or co-sponsored by the Task Force, including "Violence Against Children: A Broader Family Context" held in conjunction with the Academy of Law, the Suffolk County Bar Association and the Suffolk County Women's Bar Association. Other conferences addressed a wide range of issues: depression and its affect on families, incest, financial exploitation of the elderly, domestic violence in lesbian and gay relationships, health and counseling issues with regard to elder abuse, child sexual abuse, the role of the clergy in helping to break the cycle of family violence, and training for emergency room physicians.

As a result of this last conference, a program has been developed whereby all new Emergency Medical Technicians (EMT's) will receive training regarding domestic violence. Training opportunities will be offered to already practicing EMT's. In addition, all EMT's will be given a special reference card which contains a domestic violence assessment checklist. It is critical to offer training and support to EMT's because they are quite often the very first to encounter victims of domestic violence.

After nearly four years of an anti-domestic violence program, sufficient time has passed to allow a general shift in understanding of the dynamics of family violence and the

effective ways in which government can intervene. Having thus made enormous progress in effecting institutional change with regard to organization, policy and consciousness, the Task Force has begun to identify particular sub-populations which warrant additional inquiry and which require a somewhat modified analysis. These populations are women during pregnancy who are at heightened risk for battering, people with disabilities, and gay men and lesbians. Training for professionals who may encounter these situations has begun and will continue.

Public education is the complement to professional training: it encourages victims and perpetrators to seek help from professionals who, having received appropriate training, are equipped to provide proper intervention to help break the cycle of violence. Suffolk County does not merely encourage victims to seek help; it assures that those who answer the call for help know what to do.

Perhaps the clearest example of the inter-relationship between public education and professional training relates to encouraging victims to call the police and the assuring that well-trained, sensitive police officers respond.

Suffolk's public education effort includes the production by the County Executive's Office of a videotape in which four former victims relate their experiences. The videotape also contains information about how to get help, who to call and what to expect. It is available at all Blockbuster video stores and public libraries free of charge. A companion to the videotape is a booklet, printed in English and Spanish, which outlines victims' options and resources. This booklet is widely distributed though the victims' support network and through law enforcement agencies. The first printing of 35,000 has been distributed; a

second printing of 15,000 was also distributed; a third printing of an additional 15,000 is anticipated.

Diana Weintraub describes the relationship between public education and professional training. With regard to the value and importance of public education:

> "It takes away the strength of the bully or the abuser to know that there is not just one person fighting the battle — it's not just the victim. There is a united front, and certain things are unacceptable. When I open the little yellow booklet (Confronting Family Violence: A Guide to Legal Rights and Options) and say 'I want you to read this — it's against the law to hit, threaten, whatever' it has a higher impact than my saying it myself. I think having that film available is really important and the booklets that back it up. It gives more clout to what we tell people."

And with regard to professional training:

> "I just received a call from a nearby county on our hotline. It was a woman who said two police officers came out. She had some bruises on her. The police officers said to her, "Well, why don't you just wait till he cools down . . . it's no big deal." I can't imagine that happening here in Suffolk County because the word from the top down is it's not acceptable. You have to do something about it

if you go out on a domestic call. There is a real degree of enlightenment that someone in a nearby county wasn't afforded."

Programmatic

Changing old policies, points of view and perspectives; training professionals and educating the public: these are necessary components of an anti-domestic violence effort. A third, essential component is to develop and support programs which provide direct services to victims and their children, as well as the perpetrators of family violence.

Emergency shelter services for women and children fleeing from the violence in their lives have been supported since the outset. The administration has continued to support the Long Island Women's Coalition, which operates a shelter in Western Suffolk and a network of safe homes. In 1989, in its first budget, the administration gave a grant to The Retreat, a relatively new East End advocacy and direct services agency which is in the process of building a shelter. The Retreat has received a direct grant from the county since 1989, which has helped enable it to continue operating until the shelter opens and administrative costs can be recovered through the per diem emergency housing rate.

The development of innovative services which are offered even before the need for emergency shelter may become evident has been a priority. The Third Precinct Outreach Project was begun in 1989. Made possible through the cooperative effort of the Police Department, the Task Force on Family Violence and the Department of Social Services, a bilingual, bi-cultural advocate from the Long Island Women's Coalition is stationed in

the precinct house on Friday, Saturday and Sunday nights. She accompanies police officers to the scene where she offers advice on services and legal options to the victim. The advocate also accompanies victims to court. Between April and December of 1989, 225 clients were served; 261 clients were served in 1990; between January and mid-October of 1991, 192 clients have been served.

According to Elba Lopez, the Third Precinct Outreach Project advocate: "We needed [these changes]. I believe that more women and children are safe from violence and are leaving earlier."

Ms. Lopez also observes that:

> "[Victims] are getting out earlier. I've had women that said that when they were married to an abuser, this happened and that happened. But it's 1991 now . . . you don't have to plead for help if you're a woman and you don't want to stay."

Lopez has noted a marked decrease in repeat calls from the same people.

> "We used to get 62 calls on the weekends and I would get nine or ten clients. I only saw two this weekend (in September). This is because of the pro-arrest policy and the Third Precinct Outreach Program. It also makes a big difference that we are reaching Hispanic women."

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Executive Order 1a directed that police reports be followed-up with referral to a victim assistance agency. The police provide immediate assistance and information to victims by giving them a victims' rights card with telephone numbers of helping agencies and a listing of what their legal rights and options are.

However, since it is often difficult for a victim to take the initiative right after a traumatic event has occurred, the Victims Information Bureau of Suffolk, through a program developed and funded by the county, receives copies of all domestic violence reports. VIBS then contacts the victim by telephone or through the mail to offer assistance, advocacy, support groups and accompaniment to court. In 1989, 5003 domestic violence victims were contacted; in 1990, 6,754 victims were contacted; through September of 1991, 4,903 victims have been contacted.

Direct legal services are provided to battered spouses involved in family law and domestic relations matters through a contract between Nassau/Suffolk Law Services and the county. In 1991, 117 new cases were opened. A series of Legal Rights Workshops have been sponsored by the Women's Services Unit, conducted in both Spanish and English.

Suffolk's anti-domestic violence efforts do not only address the needs of victims. A special batterers program has been developed and is operated by the Probation Department, in conjunction with VIBS. The batterers program is an alternative to incarceration. It is a sixteen week program to which repeat offenders are sentenced by the judge. Eleven groups with four men each have been conducted; there are currently two in progress. Of the 44 men who were in the first 11 groups, 41 completed the program. The three who did not were sentenced to jail.

Perhaps most significant is the fact that none of the 41 men

who completed the program —all of whom were repeat family violence offenders —have been subsequently convicted of a family violence offense.

According to Walt Chappel, probation officer and co-leader of the batterers program:

> "Most of the men very much resist going into the group, yet by the time they are finished . . . I haven't had one single man complete the group who didn't think it was a positive experience in his life, wasn't glad he went and quite a few of them voluntarily continue in the on-going support group at VIBS. . . . What we're finding is that, among those who do the battering, we're getting a very positive response. Many people were concerned that coercively intervening in a domestic situation was not going to work, but obviously the opposite is true. We're coercively intervening with these men; we're putting them in jail; and we're letting them out on the condition they go through this program. They go into the program against their will and they come out believing that it was the right thing to do."

Mr. Chappel believes that:

> "In general men in Suffolk County are beginning to realize that they are no longer entitled to hit their partners. They are beginning to realize their behavior is inappropriate . . . When I get a domestic

> violence case, I feel much more optimistic. I have forty of them, whereas I used to get one every year and it was the worst case I had because there was nothing to do with it. My feeling is that judges and police officers and caseworkers feel the same way about it — that they have a place to go with the case. I'm really proud of the program because I think it's effective."

****

Much has been accomplished since February 5, 1988 to make Suffolk County a safer place for victims of domestic violence.

Strides have been made to offer batterers help so that they can learn to live without resorting to violence.

There is no doubt that more work lies ahead. Yet the foundations for a sustained, interagency, inter-disciplinary program are firmly in place.

According to Ruth Reynolds, program director from VIBS, the past four years of Suffolk's anti-domestic violence program

> ". . . has helped to make the issue of family violence real and serious — as it is and as we in the movement have always known it to be. The attention to the issue has been helpful to our clients. It helps them take the abuse and themselves seriously."

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Elba Lopez spoke of one of the women who related her experiences in the videotape produced by the County Executive's office (this woman is now living in upstate New York with her child and her new husband):

> "Charmaine got married and is now happy. Without the support system in this county, she would have never made it. The difference between the way it was and the way it is now is like night and day."

Supreme Court, U.S.
FILED
JUN 9 1995
CLERK

No. 94-1849

In The

Supreme Court of the United States

October Term, 1994

CECELIA N. EAGLESTON,

Petitioner,

vs.

DANIEL GUIDO, BRIAN K. BUGGE, Police Officer, DETECTIVE RIVERA, DENNIS DONNELLY, Police Officer, EDWARD KOPF, Police Officer, DANIEL MOORE, Police Officer, JACK OZER, Police Officer, DEWITT C. TREDER, JAMES ROONEY, Police Officer, MP MILWARD, Police Officer, MICHAEL PESALE, Police Officer, PAUL KERN, Police Officer, SUFFOLK COUNTY, SUFFOLK COUNTY POLICE DEPARTMENT,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the petitioner raised a question of substantial importance which would warrant the granting of a writ of certiorari?

2. Whether the circuits have been in accord regarding the treatment of equal protection claims arising from alleged discriminatory police department arrest policies in domestic violence cases?

3. Whether intent or motivation to discriminate regarding a facially neutral policy may be inferred from an alleged failure to cease the facially neutral policy?

4. Whether the petitioner had a legitimate entitlement to have her husband arrested for violation of her temporary and permanent orders of protection which would be subject to Fourteenth Amendment due process constraints?

5. Whether the Second Circuit Court of Appeals correctly affirmed the granting of qualified immunity to the police officer respondents upon finding that the officers' actions were objectively reasonable in light of legal rules that were clearly established at the time the action was taken?

6. Whether the Second Circuit Court of Appeals correctly found that the petitioner's claim accrued when she suffered compensable damages with respect to her equal protection claim?

LIST OF PARTIES

Petitioner Cecelia Eagleston is an individual.

Respondent Daniel Guido became the Suffolk County Police Commissioner two years following the occurrence of the events at issue;[1]

Respondents Brian K. Bugge, Dennis Donnelly, Edward Kopf, Daniel Moore, Jack Ozer, James Rooney, M.P. Milward, Michael Pesale and Paul Kern are Suffolk County Police Officers.

Detective Rivera is a Suffolk County Police Detective.[2]

Respondent Dewitt C. Treder was the Suffolk County Police Commissioner during the occurrence of the events at issue.

Respondent Suffolk County is a municipal corporation and a political subdivision of the State of New York.

Respondent Suffolk County Police Department is an agency of the County of Suffolk.

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1. Petitioner withdrew her cause of action against Commissioner Guido.

2. Petitioner withdrew her cause of action against Detective Rivera.

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No. 94-1849

In The

Supreme Court of the United States

October Term, 1994

CECELIA EAGLESTON,

Petitioner,

vs.

DANIEL GUIDO, BRIAN K. BUGGE, Police Officer, DETECTIVE RIVERA, DENNIS DONNELLLY, Police Officer, EDWARD KOPF, Police Officer, JACK OZER, Police Officer, DEWITT C. TREDER, JAMES ROONEY, Police Officer, MP MILWARD, Police Officer, MICHAEL PESALE, Police Officer, PAUL KERN, Police Officer, SUFFOLK COUNTY, SUFFOLK COUNTY POLICE DEPARTMENT,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENTS' BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT:

The Respondent, Suffolk County, respectfully requests that this Court deny the Petition for a Writ of Certiorari submitted by petitioner, Cecelia N. Eagleston.

STATUTORY PROVISIONS INVOLVED

In addition to the constitutional provisions cited by the petitioner, the following statutes are also involved:

New York State Criminal Procedure Law § 140.10

New York State Criminal Procedure Law § 10.00

New York State Penal Law § 240.25

New York State Family Court Act § 812

(Excerpts are reproduced in Respondents' Appendix.)

STATEMENT OF THE CASE

On December 5, 1989, the petitioner commenced this 42 U.S.C. §1983 suit against Suffolk County, the Suffolk County Police Commissioner, DeWitt Treder, and ten police officers alleging that her constitutional right to equal protection was violated by the police department's "practice of affording inadequate protection, or no protection at all, to women who have complained of having been abused by their husbands or others with whom they have a close relationship" (J.A.[3] 32). The respondents denied the allegations and asserted a qualified immunity defense (J.A. 36-41).

Petitioner's complaint sets forth several incidents of police involvement during a two-month period before she was stabbed by her husband. The complaint lists ten different police officers who responded to ten incidents.

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3. Denotes the Joint Appendix filed with the Second Circuit Court of Appeals.

Petitioner and her husband owned a one-family home (J.A. 1005, 1090) and rented an apartment in the basement to Mr. Eagleston's sister (J.A. 1006, 1114). On October 20, 1986, the petitioner served Mr. Eagleston with divorce papers. Later that day, petitioner called the police alleging that Mr. Eagleston was threatening her, was throwing objects at her and was putting holes in an unfinished basement wall which he had just erected. Thereafter, over a period of two months, the petitioner placed eleven more calls to the police department, all of which were responded to by the various police officer respondents. A majority of the calls involved incidents which were not crimes and, therefore, not arrestable offenses since they occurred outside of the police officers' presence (N.Y. Crim. Proc. Law, §140.10 (McKinney's 1992), p. 1a, *infra*).

The petitioner obtained a temporary order of protection after the October 20, 1986 incident, which ordered Mr. Eagleston to refrain from acts of violence towards the petitioner and her infant son. On November 10, 1986, Mr. Eagleston obtained an order of protection which ordered the petitioner to refrain from acts of violence and threats of physical violence against Mr. Eagleston. On November 26, 1986, petitioner obtained another order which, in addition to requiring Mr. Eagleston to refrain from acts of violence, also granted the petitioner "exclusive use and occupancy" of the marital home. While the matrimonial court had advised Mr. Eagleston orally that he was to stay away from petitioner's home, this was never set forth in the petitioner's order (J.A. 113).

Three of the calls placed by the petitioner to the police department involved allegations that Mr. Eagleston was at petitioner's home in violation of the order of protection. Officer Ozer, the only police officer who found Mr. Eagleston at the premises, did not arrest Mr. Eagleston because he was in the basement apartment which his sister rented from the parties.

On November 9, 1986, Officer Kern responded to the first incident where a party was injured. Petitioner called the police claiming that Mr. Eagleston kicked her and pulled her hair. She admitted that she did not receive any injuries (J.A. 1107-1108). Petitioner had in fact stabbed Mr. Eagleston, who was taken by ambulance to the hospital to have his wounds sutured. The next incident involving claims of violence occurred November 23, 1986. Both petitioner and Mr. Eagleston were arrested for violating each other's orders of protection. After spending the night in jail, both parties withdrew the charges against each other. On December 27, 1986, the petitioner was stabbed by her husband.

The Suffolk County Police Department made no distinction in the treatment of domestic incidents as opposed to non-domestic incidents. In 1984, the Suffolk County Legislature passed a resolution which directed the Police Commissioner to press criminal enforcement of family violence cases (Pet. App. 69a)[4]. Commissioner Treder, as a result of this resolution, issued Order 84-57 (Pet. App.71a) which reaffirmed the procedures to be utilized in handling domestic disputes and domestic violence. These procedures are in accordance with the authority to arrest set forth in the New York State Criminal Procedure Law (N.Y. Crim. Proc. Law §140.10, McKinney's 1992, p. 1a). A police officer cannot arrest a person for committing a violation outside his presence.

Commissioner Treder later issued order 85-20 regarding the treatment of orders of protection (Pet. App. 74a). This order provided that where there was probable cause that a respondent violated the terms of an order of protection, an arrest would be made. The petitioner or victim was required to sign a civilian arrest form in order to effectuate the arrest. It was not until 1988,

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4. References to Petitioner's Appendix are in the form "(Pet. App. ___)."

that Suffolk County amended its policy to require the arrest of persons who violated orders of protection, regardless of the victims' wishes.

As the result of a summary judgment motion made by the defendants, the claims against Officers Bugge, Kopf, and Kern and Donnelly were dismissed upon statute of limitations grounds. The claims against Officers Ozer and Moore were dismissed upon qualified immunity grounds. The claim against Officer Rooney was dismissed due to petitioner's failure to state a claim upon which relief can be granted (Pet. App. 31a). Petitioner withdrew the claims against Commissioner Guido and Detective Rivera.

During the first jury trial, at the close of petitioner's case, Judge Leonard Wexler dismissed the claims against the remaining police officer defendants upon qualified immunity grounds. After three days of deliberation, the jury was deadlocked. No partial verdict was rendered in open court or on the record.

The second jury trial was held before Judge Nicholas Tsoucalas who was sitting by designation. After four days of deliberation, the second jury also was deadlocked. In response to the court's inquiry as to whether the jury had answered any of the questions on the verdict sheet, the jury advised the court that two questions were answered unanimously. The jury found that the plaintiff did not prove that Suffolk County had an unconstitutional policy which denied women equal protection of law, and further found that the plaintiff proved that Suffolk County had an unconstitutional policy which denied victims of domestic violence equal protection of the law.

Judge Tsoucalas declared a mistrial and then granted defendants' directed verdict motion and dismissed the case. The

court found that petitioner failed to introduce evidence that the County had a policy which deprived the petitioner of her constitutional rights (J.A. 1047).

The Court of Appeals, Second Circuit, affirmed the lower court's dismissal finding that "on the basis of the admitted evidence, the jury could not have concluded without conjecture that the County's policy deviated from its stated arrest policy of treating domestic violence the same as other acts of violence;" and that "even if the Progress Report is deemed to show that the County's practice deviated from its stated policy, that deviation is insufficient to create a jury issue in the absence of a showing that its purpose was invidious discrimination against women" (Pet. App. 22a).

SUMMARY OF ARGUMENT

This case does not present an issue appropriate for the exercise of this Court's discretionary jurisdiction. The District Court and the Second Circuit Court of Appeals found that the petitioner failed to prove her *prima facie* case. Petitioner is now submitting a general appeal of issues which have been fully addressed by the District Court and the Court of Appeals.

The decision by the Second Circuit Court of Appeals conforms with decisions by other circuits and by this Court. There is, therefore, no conflict among the circuits requiring resolution by this Court. Accordingly, there is no basis for reviewing the Second Circuit Court of Appeals decision.

REASONS FOR DENYING THE WRIT

I.

THE STANDARD USED TO DETERMINE WHETHER A FACIALLY GENDER-NEUTRAL POLICY VIOLATES THE EQUAL PROTECTION CLAUSE HAS BEEN CONSISTENTLY APPLIED BY THE UNITED STATES COURTS OF APPEALS.

This Court addressed an equal protection challenge to a gender-neutral statute in *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979) and enunciated the standard of review to be applied. Initially, it must be determined whether the statute is truly neutral. If the statute is not gender-based, then the court must determine whether the adverse impact reflects invidious gender-based discrimination. *Feeney, supra*, 442 U.S. at 274, 99 S. Ct. at 2293, 60 L. Ed. 2d at ___. This Court stated, in pertinent part:

> "Discriminatory purpose," however, implies more than intent as volition or intent as awareness of consequences. *See United Jewish Organizations v. Carey*, 430 U.S. 144, 179, 97 S. Ct. 996, 1016, 51 L. Ed. 2d 229 (concurring opinion). It implies that the decisionmaker, in this case a state legislature, selected or reaffirmed a particular course of action at least in part "because of," not merely "in spite of," its adverse effects upon an identifiable group.

Feeney, supra, 442 U.S.at 279, 99 S. Ct. at 2296, 60 L. Ed. 2d at ___.

In an effort to invoke this Court's jurisdiction the petitioner attempts to create a conflict where none exists. The circuits which have rendered decisions concerning claims of discrimination against municipalities who fail to treat domestic abuse incidents in the same manner as they treat non-domestic abuse incidents have consistently applied the standards enunciated in *Washington v. Davis,* 426 U.S.229, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976) and *Feeney, supra.* The plaintiff must prove that the municipality has a policy or custom whereby the police provide less protection to victims of domestic violence than to victims of non-domestic violence, that discrimination against women was a motivating factor and that the plaintiff was injured by the policy or custom. *Eagleston v. Guido,* 41 F.3d 865, 878 (2d Cir. 1994); *Ricketts v. City of Columbia, Missouri,* 36 F.3d 775, 779 (8th Cir. 1994); *McKee v. City of Rockwall, Texas,* 877 F.2d 409, 416 (5th Cir. 1989); *Hynson v. City of Chester,* 864 F.2d 1026, 1031 (3d Cir. 1988); *Watson v. City of Kansas City,* 857 F.2d 690, 696 (10th Cir. 1988).

While the petitioner erroneously contends that *Watson, supra,* and *Balisteri v. Pacifica Police Department,* 901 F.2d 696 (9th Cir. 1990), indicate a disagreement between the circuits on the applicable equal protection standards, the respondents submit that those decisions are in accord with the decisions rendered by this Court and by other circuits.

In *Balistreri, supra,* the Ninth Circuit Court of Appeals reversed the lower court's dismissal of plaintiff's equal protection claim and remanded to the lower court with instructions to allow the plaintiff to amend her complaint. The Court of Appeals found that because the allegations contained within the complaint strongly suggested "an intention to treat domestic abuse cases less seriously than other assaults, as well as animus against abused women," leave to amend should have been granted. The court did not discuss the standard required to show

an equal protection violation, but merely focused upon the standards for granting leave to amend a complaint.

It is equally clear that the Tenth Circuit Court of Appeals decision in *Watson, supra,* does not conflict with the decisions of the other circuits. The court in *Watson,* citing *Village of Arlington Heights v. Metropolitan Housing Development Corporation,* 429 U.S. 252, 265, 97 S. Ct. 555, 563, 50 L. Ed. 2d 450 (1977) and *Washington v. Davis, supra,* found that the plaintiff in an equal protection action has the burden of demonstrating discriminatory intent or that a discriminatory purpose was a motivating factor. *Watson, supra,* 857 F.2d at 694. In fact, the Third Circuit Court of Appeals in *Hynson, supra,* utilized the *Watson* and *Balistreri* decisions as a guide to formulating its summary judgment standard stating:

> We agree with the *Watson* court that if the categories used by the police and domestic violence and non-domestic violence, this is not sufficient to raise a claim for gender-based discrimination absent a showing of an intent purpose or effect of discriminating against women. In order to survive summary judgment, a plaintiff must proffer sufficient evidence that would allow a reasonable jury to infer that it is the policy or custom of the police to provide less protection to victims of domestic violence than to other victims of violence, that discrimination against women was a motivating factor, and the plaintiff was injured by the policy or custom.

Hynson, supra, 864 F.2d at 1031.

The Second Circuit Court of Appeals correctly applied the

equal protection principles derived from *Washington, supra, Feeney, supra,* and its progeny, when it affirmed the dismissal of petitioner's complaint in this case.

II.

PETITIONER FAILED TO SHOW THAT SUFFOLK COUNTY HAD A POLICY OR PRACTICE WHICH DISCRIMINATED AGAINST VICTIMS OF DOMESTIC VIOLENCE.

The petitioner introduced the following evidence at trial in an effort to prove that the respondents had a discriminatory policy: a 1984 County resolution which authorized the police commissioner to press criminal enforcement in cases of family violence (Pet. App. 69a); Commissioner Treder's orders (Pet. App. 71a-92a); non-verbatim minutes of a Public Safety Committee Meeting of the County Legislature (Pet. App. 47a-66a); raw data compiled by the police department which listed domestic disputes; and the testimony of the petitioner.

The District Court and Second Circuit correctly found that the petitioner did not prove that the police department's arrest policy was discriminatory. The 1984 resolution and resultant orders issued by Commissioner Treder support the County's position that the Suffolk County Police did not discriminate.

The statistics cited by the petitioner (Petition, p. 9) were not introduced as evidence and are fundamentally flawed because, among other reasons, counsel for the petitioner calculated the arrest rates utilizing raw data which included non-arrestable offenses. The statistics concerning arrests after the incident, also not before the Court, reflect in part a change of policy which occurred two years after the occurrence of the incidents at issue.

Petitioner's testimony showed that many of the incidents involved violations which occurred outside the presence of the police officers. Other incidents involved Mr. Eagleston's lawful presence in an apartment which the petitioner and Mr. Eagleston rented to Mr. Eagleston's sister. Furthermore, the trial transcript is devoid of any sexist or demeaning remarks directed to petitioner by police officers. Officer Bugge could not arrest petitioner's husband for putting holes in a sheet rock wall of a house which he owned jointly with the petitioner. On November 7, 1986, when the petitioner went to the police precinct to lodge a complaint of harassment against her husband, Officer Kopf[5] could not arrest Mr. Eagleston because the violation occurred out of his presence. Officer Kopf testified that Mr. Eagleston did not appear at the precinct, while the petitioner testified that Mr. Eagleston appeared at the precinct and said "she is my wife and I will take her home." (J.A. 1020-1021).

On December 8, 1986, Officer Pesale responded to petitioner's call claiming that Mr. Eagleston attempted to run her down with his vehicle. Petitioner was not injured, there were no witnesses and Mr. Eagleston was not at the scene. Petitioner incorrectly states in her brief that Officer Pesale did not go into the house to investigate or search for her husband, even though she told him that he was probably in the house. Contrary to petitioner's false assertion, the petitioner testified that she did not tell Officer Pesale that her husband might be in the basement she told him that "he was in the car. He was on the road." (J.A. 509).

Petitioner did not introduce any evidence with regard to improper training. The only evidence on this issue was presented by police officers who testified that they received training on the

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5. Petitioner erroneously names Officer Kirk as the officer involved in the incident. Officer Kopf was in fact the officer involved, Officer Kirk responded to a call on November 23rd and arrested both parties for violating each other's orders of protection (Petition, p. 13).

mediation of disputes, and that the course included the mediation of both domestic and non-domestic disputes.

The Court of Appeals noted that even if it credited petitioner's interpretation of the Progress Report (Pet. App. 93a-117a), which was not in evidence before the trial court, the petitioner would have established "no more than that on the average a claim of domestic violence is less likely to result in an arrest than a claim of violence between strangers." (*Eagleston, supra,* 41 F.3d at 878). The Court of Appeals, citing *Feeney, supra,* further found that the petitioner failed to prove impermissible discriminatory intent. (*Eagleston,* 41 F.3d at 878).

Petitioner, like the appellee in *Feeney, supra,* contends that the respondents' alleged failure to cease the discriminatory practice is evidence of discriminatory intent. In *Feeney,* the appellee challenged a Massachusetts law which gave preference to veterans for civil service employment. The appellee argued that she had proven discriminatory intent based solely on evidence that the nature of the preference was demonstrably gender-biased, the impact of the preference was inevitable and the preference had no relationship to job performance. This Court rejected that argument and held that proof of discriminatory purpose requires more than intent as volition or intent as awareness of consequences. *Feeney, supra,* 442 U.S. at 281, 99 S. Ct. at 2297, 60 L. Ed. 2d 870. *See also, American Nurses Association v. State of Illinois,* 783 F.2d 716 (7th Cir. 1986) (court held that intentional discrimination cannot be inferred from the state's failure to eliminate wage disparities shown by a comparable worth report).

Accordingly, the respondent County's alleged failure to cease its gender-neutral policy does not give rise to the requisite showing of purposeful discrimination or discriminatory intent.

III.

PETITIONER FAILED TO SHOW A VIOLATION OF HER CONSTITUTIONAL RIGHT TO DUE PROCESS.

The petitioner did not allege a due process violation in her complaint, nor did she introduce evidence which would support such a claim. Petitioner's brief to the Court of Appeals contained two sentences regarding this claim:

> Finally, a municipality may be liable where its officers deny a right to which a citizen is entitled (citation omitted). Statutes, rules or understandings, contracts, ordinances and policies of a city, or an order of protection, can all confer benefits which entitle the beneficiary to constitutional due process (citations omitted).

Petitioner further failed to advise the District Court or the Court of Appeals as to the nature of the claimed entitlement or the origin of the entitlement.

In *DeShaney v. Winnebago County Department of Social Services,* 489 U.S. 189, 197, 109 S. Ct. 998, 1004, 103 L. Ed. 2d 249 (1989), this Court held that a "state's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." This Court did not consider petitioner's "entitlement" claim in *DeShaney* because it was not argued in the lower courts or raised in the petition for certiorari. *DeShaney,* 489 U.S.at 195 n.2, 109 S. Ct. at 1003 n.2, 103 L. Ed. 2d at ___.

In order for the petitioner to succeed with her Fourteenth

Amendment procedural due process claim, she must have a legitimate claim of entitlement to a property right created by state law. *Board of Regents of State Colleges v. Roth,* 408 U.S. 564, 577, 92 S. Ct. 2701, 2709, 33 L. Ed. 2d 548 (1972). It appears that petitioner claims that she was entitled to have her husband arrested for violating her orders of protection (Petition, p. 17) and that her claim of entitlement emanates from the 1984 County resolution (Pet. App. 69a) and Commissioner Treder's orders (Pet. App. 74a).

The resolution by the County legislature did not alter police arrest powers regarding violations of orders of protection. The sponsor of the resolution testified that the resolution was a policy statement and that it didn't change the state laws (J.A. 585). He further testified that the resolution did not alter the fact that the police officer makes the determination to arrest for a violation of an order of protection at the scene based upon probable cause (J.A. 591). Commissioner Treder's order specifically requires a determination of probable cause in order to arrest for violation of an order of protection.

Petitioner's temporary order of protection (p. 6a), which was granted *ex parte,* ordered petitioner's husband to refrain from acts of violence towards the petitioner or their son pending the return date of November 3, 1986. The state court, by order dated November 26, 1986, continued the temporary order requiring the petitioner's husband to refrain from acts of violence. The order also granted "exclusive use and occupancy of the marital residence" to the petitioner (p. 10a, *infra*).

Petitioner cites *Coffman v. Wilson Police Department,* 739 F. Supp. 257 (E.D. Pa. 1990) in support of her contention that an order of protection may confer an "entitlement" claim. The District Court found that orders of protection create a property interest in police enforcement cognizable under *Roth, supra.* The

property right was defined as "the right to reasonable police response." *Coffman, supra,* 739 F. Supp. at 265. *See also, Siddle v. City of Cambridge,* 761 F. Supp. 503 (S.D. Ohio 1991) (order of protection creates a property right incurring a duty upon government). Specifically, the court found that an order issued by a court and served upon a police department providing that the police department "shall" enforce the order creates a property right. *Coffman, supra,* 739 F. Supp. at 264. The *Coffman* decision contradicts the decision in *Hynson v. City of Chester,* 731 F. Supp. 1236 (E.D. Pa. 1990), a prior decision in the circuit, noting that there were no valid or prior decisions in its circuit which specifically held that an order of protection does not create a property interest. The *Hynson* court however, found that in view of the responding police officer's "broad discretion to formulate the appropriate response" to a violation of an order there could be no property interest. *Hynson, supra,* 731 F. Supp. at 1240.

Respondents respectfully submit that orders of protection which restrain the behavior of an individual do not give rise to a legitimate claim of entitlement to the arrest of the individual who allegedly violates the order. There is no automatic arrest, but merely an expectation that the respondent will behave in accordance with the order and, if not, that an arrest may be made. Unlike welfare benefits which are specifically defined *Goldberg v. Kelly,* 397 U.S. 254, 90 S. Ct. 1011, ___ L. Ed. 2d ___ (1970), the enforcement of an order of protection by arrest is dependent upon the responding police officer's judgment as to whether probable cause exists. *See Hynson, supra,* 731 F. Supp. at 1240.

No circuit court of appeals has determined that an order of protection is tantamount to a property interest. The Ninth Circuit rejected a similar due process claim in *Balistreri v. Pacifica Police Department,* 901 F.2d 696 (9th 1990). In *Archie v. City of Racine,* 847 F.2d 1211 (7th Cir. 1988), *cert. denied.* 489 U.S. 1065, 109 S. Ct. 1338, 103 L. Ed. 2d 809 (1989), the Seventh

Circuit affirmed the dismissal of plaintiff's due process claim against a dispatcher who refused to provide rescue service. The circuit court noted that procedural entitlements established by state law "are not themselves property and if a state erratically deprives a person of property, . . . the opportunity to obtain redress in state court *is* due process when a prior hearing is infeasible. . ." *Archie, supra,* 847 F.2d at 1217.

Assuming, *arguendo,* that the petitioner has established a property interest in her temporary order of protection and order of protection, she is entitled to no more than reasonable efforts to enforce the order. *Hynson, supra; Coffman, supra; Siddle, supra.* The trial court correctly dismissed the claims against each of the police officer respondents on qualified immunity grounds, after finding that their actions were objectively reasonable. This finding precludes petitioner's due process claim.

IV.

THE RESPONDENT POLICE OFFICERS WERE GRANTED QUALIFIED IMMUNITY BECAUSE THEIR ACTIONS WERE OBJECTIVELY REASONABLE IN LIGHT OF THE LEGAL RULES THAT WERE CLEARLY ESTABLISHED AT THE TIME.

The individual police officer respondents herein were granted qualified immunity because they demonstrated that it was objectively reasonable to believe that probable cause to arrest did not exist and/or that it was objectively reasonable to believe that they had no authority to arrest. The dismissal of the individual police officer respondents conforms to the standard set forth in *Harlow v. Fitzgerald,* 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982) and *Anderson v. Creighton,* 483 U.S. 635, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987).

Additionally, this Court has acknowledged that police officers may, on occasion, incorrectly determine that probable cause to arrest is present, and the court has granted qualified immunity notwithstanding the lack of probable cause. *Malley v. Briggs,* 475 U.S. 335, 106 S. Ct. 1092, 89 L. Ed. 2d 271 (1986). In *Anderson, supra,* this Court held that in cases where police officers mistakenly conclude that probable cause is present, the police officer should not be held personally liable if he acted in a way he reasonably believed to be lawful. 483 U.S. at 641, 107 S. Ct. at 3040, 89 L. Ed. 2d at ___. The Second Circuit has held that "when reasonable officers could disagree as to whether probable cause exists, the immunity defense is available." *Cartier v. Lussier,* 955 F.2d 841, 846 (2d Cir. 1992).

The question of immunity is distinct from the question of probable cause. Probable cause may be absent but immunity may still attach. *Magnotti v. Kuntz,* 918 F.2d 364 (2d Cir. 1990). Only where a police officer's belief concerning the presence of probable cause is patently unreasonable will he be denied qualified immunity. *Magnotti, supra,* 918 F.2d at 368.

The evidence introduced at trial clearly demonstrated that the police officers acted reasonably. It logically follows that if the doctrine of qualified immunity can shield a police officer from liability for an arrest without probable cause, then the doctrine should also shield a police officer from liability from not effecting an arrest where the police officer reasonably believes that there is no probable cause for an arrest.

V.

THE PETITIONER'S CLAIM ACCRUED WHEN SHE KNEW OR HAD REASON TO KNOW SHE WAS SUFFERING FROM A WRONG CAUSED BY THE RESPONDENT.

Petitioner alleged separate wrongful acts against each of the named police officers (J.A. 31) because of their alleged failure to act on specific threats and acts against the petitioner. Petitioner testified that she was not satisfied with police actions at the time they occurred and she expected an arrest at the time of each incident (J.A. 1122). The acts complained of against four defendant police officers occurred more than three years prior to the filing of the complaint on December 5, 1989.

There is no question that the statute of limitations for 42 U.S.C. §1983 actions in New York is three years. *Owens v. Okure*, 488 U.S. 235, 109 S. Ct. 573, 102 L. Ed. 2d 594 (1989).

The issue raised by the petitioner is at which point her claims accrued. The District Court dismissed the claims against the four officers finding that each officer's alleged failure to act was sufficient to enable the petitioner to know that she had suffered a compensable injury (A. 38a). The Second Circuit affirmed the dismissal of these claims by noting that the petitioner testified that she was beaten on November 23, 1986, and that her claims against the respondents for violating her rights to equal protection accrued at that time. *Eagleston, supra*, 41 F.3d at 872. Because the incidents involving the four police officers pre-dated November 23, 1986, the statute of limitations had expired. *Eagleston, supra*, 41 F.3d at 872.

This Court affirmed that the proper focus with regard to the accrual of a claim is "upon the time of the *discriminatory* acts, not

upon the time at which the consequences of the acts became most painful." *Delaware State College v. Ricks*, 449 U.S. 258, 101 S. Ct. 504, 66 L. Ed. 2d 431 (1980) *citing Abramson v. University of Hawaii*, 594 F.2d 202, 209 (9th Cir. 1979). *See also, Chardon v. Fernandez*, 454 U.S. 6, 102 S. Ct. 28, L. Ed. 2d 6 (1981). Petitioner argues the opposite.

Because this issue was decided by the courts herein in accordance with the sound legal precedent established by this Court, it should not be revisited.

CONCLUSION

For all the foregoing reasons, petitioner's request for a writ of certiorari should be denied.

Dated: Hauppauge, New York
June 5, 1995

Respectfully submitted,

ROBERT J. CIMINO*
Suffolk County Attorney
JELTJE deJONG
Assistant County Attorney
Attorneys for Respondents
158 North County Complex
Veterans Memorial Highway
Hauppauge, NY 11787-4311

* *Counsel of Record*

APPENDIX A — RELEVANT STATUTES

NEW YORK STATE CRIMINAL PROCEDURE LAW § 140.10(1)

§140.10 Arrest without a warrant; by police officer; when and where authorized

1. Subject to the provisions of subdivision two, a police officer may arrest a person for:

(a) Any offense when he has reasonable cause to believe that such person has committed such offense in his presence; and

(b) A crime when he has reasonable cause to believe that such person has committed such crime, whether in his presence or otherwise.

* * *

NEW YORK STATE CRIMINAL PROCEDURE LAW § 10.00

§ 10.00 Definitions of terms of general use in this chapter.

Except where different meanings are expressly specified in subsequent provisions of this chapter, the following terms have the following meanings:

Appendix A

1. "Offense" means conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law, local law or ordinance of a political subdivision of this state, or by any order, rule or regulation of any governmental instrumentality authorized by law to adopt the same.

* * *

6. "Crime" means a misdemeanor or a felony.

NEW YORK STATE PENAL LAW § 240.25

§ 240.25 Harassment

A person is guilty of harassment when, with intent to harass, annoy or alarm another person:

1. He strikes, shoves, kicks or otherwise subjects him to physical contact, or attempts or threatens to do the same; or

2. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or

3. He follows a person in or about a public place or places; or

Appendix A

[4. Repealed]

5. He engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose.

Harassment is a violation.

NEW YORK STATE FAMILY COURT ACT § 812

§ 812 Procedures for family offense proceedings.

1. Jurisdiction. The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, harassment, menacing in the third degree, reckless endangerment, assault in the second degree, assault in the third degree or an attempted assault between spouses or former spouses, or between parent and child or between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. Fur purposes of this article, "disorderly conduct" includes disorderly conduct not in a public place. For purposes of this article, "members of the same family or household" shall mean the following:

(a) persons related by consanguinity or affinity;

(b) persons legally married to one another;

(c) persons formerly married to one another, and

(d) persons who have a child in common regardless whether such persons have been married or have lived together at any time.

2. Information to petitioner or complainant. The chief administrator of the courts shall designate the appropriate probation officers, warrant officers, sheriffs, police officers or any other law enforcement officials to inform any petitioner or complainant bringing a proceeding under this article, before such proceeding is commenced, of the procedures available for the institution of family offense proceedings, including but not limited to the following:

(a) That there is concurrent jurisdiction with respect to family offenses in both family court and the criminal courts.

* * *

Appendix A

(Identical provision is also set forth in New York State Criminal Procedure Law §530.11 "Procedures for Family Offense Matters.")

APPENDIX B — ORDER TO SHOW CAUSE DATED OCTOBER 23, 1986

At a Trial Term, Part 16, of the Supreme Court of the State of New York, in and for the County of Suffolk, held at the Courthouse thereof at Hauppauge, New York on the 23 day of Oct., 1986.

PRESENT:

HON. WILLIAM R. GEILER
JUSTICE

INDEX NO. 86-19952

CECELIA N. EAGLESTON.

Plaintiff,

-against-

THOMAS EAGLESTON,

Defendant,

ORDER TO SHOW CAUSE

UPON the annexed affidavit of CECELIA N. EAGLESTON, duly sworn to the 21st day of October, 1986, the affirmation of WILLIAM L. NETUSIL, ESQ., duly sworn to the 21st day of October, 1986, and upon all the papers and proceedings heretofore,

Appendix B

LET the defendant, THOMAS M. EAGLESTON, Show Cause before this Court at Motion Term to be held at Supreme Court, located at Veteran's Memorial Highway, Hauppauge, New York on Nov. 3rd, 1986 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard why an order should not be made and entered herein,

(a) Granting the plaintiff and the infant Steven D. Eagleston an Order of Protection against the defendant directing him to refrain from any and all acts of violence directed towards the plaintiff and the said infant; directing the defendant to stay away from the place of residence of the plaintiff, her place of employment, and the school of the infant;

(b) Granting the plaintiff temporary use and occupancy of the marital residence;

(c) Granting the plaintiff exclusive use and possession of a 1974 Ford Mustang II automobile;

(d) Granting the plaintiff temporary exclusive possession of certain items of personal property;

(e) Granting the plaintiff sole custody of the infant Steven D. Eagleston, and restraining the defendant from removing said infant from the County of Suffolk;

(f) Directing that the Supreme Court retain exclusive jurisdiction over the instant matter;

* * *

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* Copy deleted by Hon William R. Geiler, J.S.C.

Appendix B

AND it appearing that this motion should be brought on in less time than would be required by Notice of Motion, let personal service of this Order and the papers upon which it is based upon the defendant, THOMAS J. EAGLESTON, on or before the 27th day of Oct., 1986 be deemed good and sufficient service.

AND, for good cause shown, pending the return date of this motion, let the defendant be ordered to refrain from any acts of violence towards the plaintiff or the infant Steven D. Eagleston, and let it be further

* * *

ORDERED, that the plaintiff have temporary exclusive use and possession of the 1974 Ford Mustang II, and have temporary exclusive possession of the items of property more fully set forth herein.

Dated: October 23, 1986

ENTER

s/ William R. Geiler
JUSTICE OF THE SUPREME COURT

APPENDIX C — ORDER OF PROTECTION DATED NOVEMBER 26, 1986

At a Trial Term, Part 17,
of the Supreme Court of the
State of New York, held in
and for the County of Suffolk,
at Hauppauge, New York on the
26 day of November, 1986.

PRESENT:

HONORABLE RALPH YACHNIN
Justice of the Supreme Court

Index No. 86-19952

CECELIA N. EAGLESTON.

Plaintiff,

-against-

THOMAS EAGLESTON,

Defendant,

ORDER

The plaintiff having initiated a contempt proceeding alleging the wilful violation by the defendant of an Order of an Order of this Court, and having been represented by WILLIAM L. NETUSIL, ESQ., and the defendant having been represented by the Suffolk County Legal Aid Society by: MICHAEL FUCHS, ESQ., and both parties having personally appeared before the

Appendix C

Honorable Ralph Yachnin on November 25, 1986, the parties having entered into a Stipulation which was orally presented on the record, it is hereby ORDERED;

1. That the contempt proceeding is hereby withdrawn by the plaintiff.

2. That the temporary order of protection contained within the Order to Show Cause signed by the Honorable William R. Geiler on October 23, 1986, requiring the defendant, THOMAS J. EAGLESTON, refrain from any acts of violence towards the plaintiff, CECELIA N. EAGLESTON, or the infant, STEVEN EAGLESTON, be continued until the return date of the aforesaid Order to Show Cause, to wit: DECEMBER 8, 1986, or such further adjourned date as the Court may grant.

3. Custody of STEVEN EAGLESTON, born September 28, 1978, is hereby awarded to the plaintiff, CECELIA N. EAGLESTON, until the return date of the Order to Show Cause, to wit: DECEMBER 8, 1986, or such further adjourned date as the Court may grant.

4. That the defendant, THOMAS J. EAGLESTON, shall refrain from having any contact with the infant, STEVEN EAGLESTON, until the aforesaid return date of the said Order to Show Cause.

5. That exclusive use and occupancy of the marital residence, located at 210 Irving Street, Central Islip, New York, is awarded to the plaintiff, CECELIA N. EAGLESTON.

Appendix C

ENTER

s/ RALPH YACHNIN
JUSTICE OF THE SUPREME COURT

[stamped]
GRANTED
NOV 26 1986
Juliette A. Kinsella
Clerk of Suffolk County

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

I, JULIETTE A. KINSELLA, Clerk of the County of Suffolk and the Court of Record thereof, do hereby certify that I have compared the annexed with the original ORDER and, that the same is a true copy thereof, and of the whole of such original.

In Testimony Whereof, I have hereunto set my hand this 26th day of November 1986.

s/ Juliette A. Kinsella (jk) Clerk
Juliette A. Kinsella